

Chas. Lewis.

THE
TRIAL

OF

K DAVID M^cLANE

FOR

High Treason,

AT THE

CITY OF QUEBEC, IN THE PROVINCE OF LOWER-CANADA.

ON

Friday, the Seventh day of July, A. D. 1797.

TAKEN IN SHORT-HAND, AT THE TRIAL.

QUEBEC:

PRINTED BY W. VONDENVELDEN,
LAW PRINTER TO THE KING'S MOST EXCELLENT MAJESTY,
1797.

THE
TRIAL
OF
DANIEL MANN

At the
City of Quebec, in the Province of Lower Canada.

1874

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PRINTED BY W. H. B. 1874



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DAVID M^cLANE

FOR

HIGH TREASON.

A Special Commission of Oyer and Terminer, was issued on the 24th. of May, 1797, under the Great Seal of the Province of Lower-Canada, empowering the Justices thereby assigned, or any three of them (Quorum un' &c.) to enquire, hear and determine all High Treasons and Misprisions of High Treasons, committed within the District of Québec.

THE JUSTICES ASSIGNED WERE

The Honorable WILLIAM OSGOODE,
his Majesty's Chief Justice of the Province.

The Honorable JAMES MONK,
Chief Justice of his Majesty's Court of King's Bench for the
District of Montreal.

The Honorable THOMAS DUNN, JENKIN WILLIAMS, and
PIERRE AMABLE DEBONNE, Justices of his Majesty's Court
of King's Bench for the District of Québec.

The Honorable PAUL ROE DE ST. OURS,

The Honorable HUGH FINLAY,

The Honorable FRANCOIS BABY,

The Honorable JOSEPH DE LONGUEIL,

The Honorable PIERRE PANET,

The Honorable JAMES M^cGILL,

The Honorable JOHN LEES,

The Honorable ANTOINE JUCHEREAU DUCHESNAY

The Honorable JOHN YOUNG, Members of the Executive Council,

The

The Chief Justice of the Province and the Chief Justice of the King's Bench of Montreal were of the Quorum.

The Precept was signed by the Chief Justice, Mr. Justice Dunn, Mr. Justice Williams and Mr. Justice Debonne, was tested the twenty-sixth day of May, returnable on Monday, the 12th. day of June, which made fifteen days exclusive between the Teste and Return. This was ordered upon the Precedent of the Precept issued for the Trial of the Scotch Rebels, in 1746. (a)

ON MONDAY, the 12th. of June, the Special Commission was opened at the Court House in the City of Quebec.

PRESENT,

The Honorable the Chief Justice,
 The Honorable Mr. Justice Dunn.
 The Honorable Mr. Justice Debonne,
 The Honorable Hugh Finlay,
 The Honorable François Baby,
 The Honorable Joseph De Longueuil,
 The Honorable Antoine Juchereau Duchesnay,
 The Honorable John Young.

The Commission was openly read. The Sheriff then delivered in the Pannel of the Grand Jury, which was called over, and the following Gentlemen were sworn.

THE GRAND JURY.

Francis Le Maître, Esquire, Foreman.

Peter Stuart, Esq.	Louis Dunier, Esq.
Jacques Perreault, Esq.	Jacob Danford, Esq.
Nathaniel Taylor, Esq.	Augustin J. Raby, Esq.
Louis Germain, Esq.	Kenelm Chandler, Esq.
John Coffin, Esq.	John Craigie, Esq.
Hyppolite Laforce, Esq.	Alexander Dumas, Esq.
Comte Dupré, Esq.	François Filion, Esq.
Charles Pinguet, Esq.	John Purfs, Esq.
Louis Turgeon, Esq.	Pierre Langlois, Esq.
James Frost, Esq.	Joseph Drapeau, Esq.
George Allsopp, Esq.	

After the usual Proclamation for silence, the following Charge was given to the Grand Jury by,

a) Vide Foster's Crown Law. p. 1.

THE CHIEF JUSTICE.*

Gentlemen of the Grand Jury,

THE Bills of Indictment for the Crime of High Treason, that have lately been found by the Grand Inquest of a neighbouring District, and the recent Commitments that have taken place for the same Crime in the District of Quebec, afford abundant Proof of the Expediency of the Act passed in the last Session of the Legislature, for the better Preservation of his Majesty's Government, as by Law happily established in this Province.—On the present Occasion, however, it has not been necessary to resort to any of the Powers created under that Act; and on Account of the Formalities and Delays incident to the Proceedings on an Indictment for High Treason, as a considerable Period of time must unnecessarily elapse before a Trial could be had within the stated Terms allotted for the Administration of criminal Justice;—His Excellency the Governor has therefore thought proper to direct the special Commission, You have now heard read, to issue. This Measure was adopted in Tenderneſs to the Parties committed, to relieve them from a long Confinement should they be innocent, or for the benefit of a prompt Example should they be guilty. It therefore now becomes your Duty, Gentlemen, in consequence of this Commission, to enquire into such Charges as shall be laid before you, respecting the Crimes of High Treason, or Misprision of Treason, within this District, and either to find or to ignore the same; and also to present any Persons whom you may know to have committed the like Crimes, should any such have come within your Knowledge. In Justice to the People of this Province it should be observed, that, from the first Establishment of the British Government in this Colony, down to a certain Period, the Crime of High Treason, so far from being committed, had perhaps not even been mentioned from the Bench, or even held a Place in the Enumeration of Offences likely to be attempted. Till this Period, the Canadians, convinced by Experience that they had the full Enjoyment of every Privilege to which their Ancestors had been accustomed, and that they were even exempted from some rigorous Services incident to a Government purely Monarchical, contentedly lived under the King's mild Dominion, and shewed their Satisfaction by a cheerful Submission to the Laws. It need hardly be mentioned that the Period to which I allude is that of the sanguinary Revolution in France, since which Time Emissaries have been sent forth, as well native as Proselytes, under the Pretence of diffusing Liberty, to disturb the Quiet
of

* William Osgoode, Esq.

of all settled Governments. Every Symptom of Disobedience, and the few Instances of marked Disaffection, that have appeared in this Colony, may be traced to this Source of Delusion. It is therefore some Consolation to reflect, that the Evil is not of native Growth, but has been introduced by the insidious Acts of Mischievous Foreigners, who have practised on the Minds of the Ignorant and Credulous Natives. Since, therefore, Commitments have taken place for Crimes hitherto unperpetrated, and till of late unsuspected in this Province, it becomes the Duty of the Bench to explain somewhat more fully, in the Charge, the general Heads of the Offence imputed to the Prisoners, that you, Gentlemen, may be enabled to apply the Principles laid down to the Cases that may be brought before you.

At the Period when Laws were framing, after the first Formation of Society, it must have occurred as a Principle of natural Justice, to those employed in reflecting on the Subject, that the Punishment to be inflicted on Crimes should be proportioned to the Enormity of the Offence. To that End it became necessary to form a Scale of Crimes, of which the Gradations should be regulated by the pernicious Tendency of the Act committed. The first Object in framing Laws is to establish certain Rights and to secure them, as far as human Sanctions may prevail, both for the Preservation of the general Body of Society and for the Protection of Individual Interests. As all Crimes consist in the Violation of some Right, the Magnitude of the Offence must depend on the Nature of the Right thereby violated; consequently, of Crimes the greatest is that which is immediately destructive of Society, and the smallest is the least possible Injustice done to an Individual. To this highly destructive Crime different Appellations have, at different Times, been given. The earliest Writer on the English Law has described this Crime under the Term *Læse Majesty*, which he states to be, when a Person attempts any thing against the King's Life, or to raise Sedition against him, or in the Army, tho' what was designed be not carried into Effect, and all those who gave Aid, Counsel, or Consent thereto, were equally involved in the Guilt. The Law required an Accusation of this Crime to be made with all Expedition, the Informer was not to stay two Nights, nor two Days in one Place, nor to attend to the most urgent Business of his own; he was hardly permitted, as is mentioned in the Book, to turn his Head behind him, and the dissembing the charge for a Time made him a sort of Accomplice.

The Crime, soon after, was designated by the Term of High Treason,

Treason, and was described, by subsequent Writers, according to the prevailing Notions of the Time: it was generally understood to consist in a Breach of the Faith and Allegiance due to the Crown; which is a Notion sufficiently correct; but the principal Grievance arose from the Want of a specific Definition of those particular Offences against Allegiance which should constitute the Crime of High Treason. For, by a plausible Kind of Induction, many lawless Acts of a criminal Nature might, in those unenlightened Times, be shewn to offend against Allegiance. It is therefore no Wonder that Piracy was understood to be classed among treasonable Offences, as likewise the Concealment of Treasure-trove. So was also an Appeal to a foreign secular Jurisdiction; for, this imported renouncing of the King's Authority in his Courts of Justice. Counterfeiting the Great Seal, was, by some, deservedly held to be High Treason, on account of the Authenticity ascribed to the Instrument, at a time when, from Want of Litterature, some visible Symbol was necessary to stamp a Credit on public and private Transactions of State; but, by others, the Counterfeiting of the Great Seal, as well as of the King's Money, was classed under a Description of Crime called *Fausonnerie* or *Falsifying*. The Killing of a King's Messenger was held to be Treason, till at length the Imputation of Treason seemed to be affixed to every Offence in which the King's Name was mentioned. Among other extraordinary Instances was the Case of a Person who had been sworn on the Grand Inquest, who, having revealed the Evidence given upon an Indictment for Felony, was, for such Disclosure, himself indicted of Felony, and because he had not kept the King's Counsel, according to the Terms of the Oath, the Offence was, by some, held to be Treason, but, of this the Chief Justice ventured to doubt. In these turbulent Times it was customary for the powerful Barons and other Great Men to redress their private Grievances, and to enforce what they thought their Due by their own Powers, this at length came to be construed into Treason under the Appellation of *accroaching* the Royal Power; thus, in the case of a Knight in the Neighbourhood of London, who, with his Followers, in a warlike Manner, assaulted and detained another Gentleman till he paid him Ninety Pounds and took away his Horse. The Knight was indicted "for *accroaching* the Royal Power within the Realm, while the King was in foreign Part, by manifest Sedition against his Allegiance", He was convicted and prayed his Clergy, but it was refused him on account of the Nature of the Crime. This Case happened in the 21st Year of the Reign of King Edward

III and occasioned a Petition in Parliament, by the Commons, that it might be declared "in what Cases they accroached the Royal Power", To this Petition, according to the Custom of the Times, an Answer was given by the King, but the Answer appears to be rather elusive and unsatisfactory. These Grievances continued to be so oppressive, that the Commons would not be contented till some more precise and accurate Declaration should be made on the subject, and accordingly they again petitioned the King in the 25th Year of his Reign, stating "that many Persons were adjudged Traitors for divers Causes unknown to the Commons to be Treason, and therefore requesting, that the King would, by his Counsel and the great and wise Men of the Land, declare the Points of Treason in that present Parliament." This Petition gave rise to the celebrated Statute of Treasons, which has stood the Test of succeeding Ages without being altered in a single Tittle to this Day, on account of which, and for other excellent Laws passed by that Parliament, it obtained the Appellation of the blessed Parliament. Hitherto I have been stating what was formerly held to be Treason. I now proceed to shew what is Treason at this Hour, for, on this Statute it is that the Indictments to be laid before You will be framed.

The Points or Heads of Treason declared by this Act are seven in Number.

The first is the Compassing of the Death of the King, Queen, or Prince, and declaring the same by an overt Act.

The second, is the Violation of the King's Consort, the King's eldest Daughter unmarried, or the Prince's Wife.

The third, the levying of War against the King in his Realm.

The fourth, is the Adhering to the King's Enemies, giving them Aid and Assistance within the Realm, or elsewhere.

The fifth, the Counterfeiting the Great or Privy Seal.

The sixth, the Counterfeiting the King's Coin, or bringing Counterfeit Coin into the Realm.

The seventh, the Killing of the Chancellor, Treasurer, Justices of the one Bench or other, Justices in Eyre, Justices of Assize, Justices of Oyer and Terminer in their Places doing their Offices.

In this Statute it is observable, that an express Exception is made, probably in reference to the Case of the Knight already stated, to have given rise to the former Petition, that, if a Man shall ride armed against another with Intent to kill or imprison him, it shall not

not be adjudged Treason, but Felony or Trespass, as the Case may be, according to the ancient Usages of the Realm.

The Statute further requires expressly, that the Party, accused of the different Kinds of Treason therein declared, shall be attainted upon sufficient Proof of some open Act, by Men of his own Condition. Some of the Treasons thus specified do, of themselves, import an open Act, such as counterfeiting the Seals, or killing the Chancellor. Others again respect the Intention of the Mind, such as compassing the King's Death. But as, to discover the secret Purposes of the Heart is the Attribute of Omniscience alone, so it would be highly presumptuous and dangerous in human Tribunals, to take Cognizance of the Compassings of Men's Minds, without some substantial Evidence of the Intention. The Law therefore requires that such Compassing be proved by some open Act. Further, it has been determined that meer Words alone, without Reference to some design on Foot, or unaccompanied by some Act, will not amount to Treason; the Observation being, that Words may make an Heretic, but not a Traitor without an overt Act. Writings also of a treasonable Tendency, while they remain unpublished and unconnected with any actual Project, will not make a Man a Traitor, how pernicious soever the Theory may be, but on the other Hand, as all Writings import a deliberate Act, and more especially when published, so they may be produced as overt Acts of different Kinds of Treason. Thus Cardinal Pole, who, a Subject of Henry VIII. and related to him in Blood, wrote and published a Book in which he incited the Emperor Charles V. at that Time preparing War against the Turks, to bend his force against England, and against Henry VIII. the Cardinal's natural Sovereign and Liege, the Writing of this Book is stated, by Lord Coke, to be a sufficient overt Act within the Statute of compassing the King's Death, but not of the Branch of adhering to the King's Enemies, because at the Time of publishing the Work, as has justly been observed by Sir Matthew Hale, the Emperor was at Peace with the King; from which it may be inferred that, had the Emperor been at that Time an Enemy, it might have been charged as an overt Act of giving Aid and Assistance to the King's Enemies. Moreover, where Papers relating to a certain determinate treasonable Purpose, proved to be the Hand-writing of the Party accused, are found in his Possession, they may be given in Evidence against him tho' unpublished. For, it is admitted by Sir Michael Foster, one of the most intelligent and liberal of those who have discoursed upon High Treason, that, had the Papers, found in Mr. Sydney's Closet, been plainly relative to the other treasonable Practices, charged in

the Indictment, they might have been read in Evidence against him tho' not published. So likewise, if Words are used with regard to some treasonable Design, and are accompanied by an Act tending to the same Purpose, and Proof thereof is given, the Words coupled with the Act will amount to Treason. This has been adjudged in the Case of one Crohagau, who, being, at Lisbon, said, I will kill the King of England if I can come at him; the Indictment having set forth the Words, and it being charged that he came into England for that Purpose, this overt Act being proved, he was convicted of High Treason.

To shew how religiously the Words of this Statute have been attended to, and fully to explain the Nature of an overt Act, I shall mention the most memorable Case that ever occurred on this Head of Treason, which was that of the Regicides of Charles the first; they were not indicted for murdering the King, but for compassing his Death and his Execution by Warrant under their Hands, which was given as an overt Act of such Compassing.

Another Head of Treason is that of levying War against the King in his Realm; this is either positive, or constructive. It is positive so far as it applies to any rebellious Insurrection by a Pretender to the Throne or factious Demagogue, with Drums or Trumpeters, in Martial Array, either to dethrone the King, or to take him into their Power, under Pretence of altering the Measures of Government, or of removing evil Counsellors. By Construction of Law it extends to those Cases where Insurgents move not immediately against the King's Person, but for the Purpose of carrying into Execution any general and illegal Design, such as to pull down all Turnpikes, to destroy all meeting Houses, to expell all Foreigners, to reform any real or imaginary Grievance of a public Nature, in which the Insurgents have no particular Interest (for, the Law has provided a peaceable Mode of seeking Redress in these Cases by Petition to either Branch of the Legislature). But, as it was solemnly resolved in a recent Case, every Attempt, by Intimidation or Violence to obtain the repeal of a Law, comes within this Branch of the Statute, and is Treason.

Another Head of Treason is that of adhering to the King's Enemies, and giving them Aid and Assistance within the Realm or elsewhere. From the Nature of the Depositions taken on the Commitment, it is probable that the Indictments may have some reference to this Charge. By the Cases on this Branch of Treason it has been adjudged, that it is not necessary the Aid and Assistance intended should

should actually be carried into Effect. Lord Preston and two other Gentlemen intending to join James the II. after his Abdication, were taken on the River Thames, on their Passage to France, with Letters and Papers to induce Lewis the XIV. to promote a Scheme for invading the Kingdom in favour of King James. This Setting off was determined to be an overt Act of their Intention to aid and assist the King's Enemies, and altho' they were apprehended before any Part of their Traiterous Design was carried into Effect, and before they had even quitted the Realm, yet, the Act of embarking with such Intention being found by the Jury, it was held to be a sufficient Act of adhering to the King's Enemies and the Parties were convicted. Much about the same Time, when there was a War between England and France, one Vaughan obtained a Commission from France and went upon a Cruise against the King's Subjects, he was taken near the Downs, and tho' no other Act of Hostility was proved or charged against him, yet, the Act of Cruising was held to be a sufficient Adherence to the King's Enemies and he was convicted and executed. In Queen Anne's Time it was discovered that one Gregg, a Clerk in the Secretary of State's Office, gave Notice by Letter to the French Ministry, of the Number and Destination of a Body of Troops going on some military Enterprize; his Letters were intercepted and he was thereupon indicted of High Treason for compassing the Queen's Death and adhering to her Enemies; he pleaded guilty to the Charge and was executed. Another Case on this Branch of the Statute occurred towards the latter End of the Reign of his late Majesty George II. and was that of Florence Henfy, a Physician, who was indicted of High Treason for compassing the King's Death, and for adhering to, aiding and corresponding with the King's Enemies; the overt Act charged against him was the Writing of Letters, soliciting a foreign Prince to invade the Realm; now, altho' these Letters were intercepted, and never reached their Place, from which to ordinary Comprehensions it might seem that his Offence was not very hurtful, yet, Lord Mansfield laid it down as a Point that never was doubted, that the Offence of sending Intelligence to the Enemy of the Destinations and Designs of this Kingdom and Government, in Order to assist them in their Operations against us, or in Defence of themselves, is High Treason.

From the Principles of these adjudged Cases it may therefore be concluded that, should any Person, being a Confederate with, or employed by the King's Enemies, declare an Intention of coming into the Province, at a given or any Time, with a Design of promoting an Insurrection, either to surprize a King's Fortress or to deliver
any

any Part of the Province into the Hands of the Enemy, and he do actually come in with such Intention, the same is unquestionably an overt Act of Adherence and is High Treason. The same Law was laid down in Lord Preston's Case, when he was told by Lord C. J. Holt—Your Lordship took Boat in Middlesex in Prosecution of that Intention, there is an overt Act in this County of Middlesex; afterwards he was told from the Bench—You took Water at Surrey-stairs, and every Step You made in Pursuance of this Journey was Treason wherever it was.

Every Charge of High Treason is laid to be done against the Allegiance due by the Party. Every Person, being within the King's Dominions, owes him Allegiance. If a Subject, his Allegiance is natural, if an Alien it is temporary; and for that Purpose every Alien was formerly compellable to be sworn at the Court Leet. Whilst an Alien Friend continues peaceably in the King's Dominions he is entitled, in common with the King's Subjects, to the Protection of the Law, from which he may obtain Redress for any Injury to his Person or Property; in Return for this Protection he owes the Duty of Allegiance. There can be no doubt therefore, if an Alien Friend comes into this Province (for the Words of the Statute are, within the Realm or elsewhere) with an Intent to give Aid and Assistance to the King's Enemies, it is a Breach of the Allegiance he owes to the King during his Residence in this Province. It is observable that most of the Indictments for adhering to the King's Enemies have been framed upon two Branches of the Statute, first, on that of compassing the King's Death, and secondly, on that of adhering. This Practise is founded on an Inference of Law, that he, who adheres to the King's Enemies, engages in and supports a Warfare, by which the King's personal Safety is endangered, and therefore such Traitor compasses his Death; when the Warfare is excited in that Part of the Dominions where the King personally resides, in Case of successful Invasion by the Enemy, the Probability of his Death is not very remote. In Contemplation of Law his Life is always compassed by his Enemies, and the Statute, having no Limitation of Place, is to be taken generally. Whether the Crown Officer may chuse to adopt or reject the Charge of compassing the King's Death is a matter of mere Discretion. If former Precedents are pursued, the Charge cannot vitiate the Indictment for the Reason before assigned; if they are departed from, the Charge of adhering, to the King's Enemies

" It is ordered that the Sheriff of the District of Quebec do
" forthwith deliver to Mr. Attorney General a List of the Jury, to
" be returned by him for the Trial of the Prisoner, David M'Lane,
" mentioning the Names, Profession and Places of Abode of such
" Jurors, in Order that such List may be delivered to the Prisoner
" at the same Time that the Copy of the Indictment is delivered to
" him."

The Prisoner was then brought to the Bar and informed by the Court that, a Bill of Indictment for High Treason had been found against him, of which it was the Duty of the Attorney General to serve him with a Copy, together with Lists of the Jurors to be returned by the Sheriff for his Trial, and of the Witnesses to be produced on the Part of the Crown. The Court added that he was entitled to Counsel, if he wished for such Assistance.

The Prisoner said he did, and on his request; Mr. PYKE and Mr. FRANKLIN were assigned by the Court to be his Counsel.

Mr. Attorney General then moved " That the Prisoner be now
" remanded, and that he be brought to the Bar of this Court on
" Friday, the thirtieth Day of this Instant month of June, then to
" be arraigned."

Which was ordered; and the Court adjourned to Friday, the 30th. day of June Instant.

(ON SATURDAY, the 17th June, a Copy of the Indictment, a List of the Jurors to be impanelled by the Sheriff, and a list of the Witnesses to be produced by the Crown for proving the Indictment, were delivered to the Prisoner in the manner directed by the Statute, 7. Anne: c. 21. s. 11.)

FRIDAY, 30th. JUNE.

PRESENT.

The Chief Justice,
The Chief Justice of Montreal,
Mr. Justice Dunn,

And others his Majesty's Justices, &c.

David M'Lane, was arraigned upon the following Indictment:

PROVINCE

PROVINCE OF LOWER-CANADA,
DISTRICT OF QUEBEC, to wit.

BE IT REMEMBERED that, at a Special Session of Oyer and Terminer of Our Sovereign Lord the King, of and for the District of Quebec, holden at the City of Quebec, in the aforesaid District of Quebec, on Monday, the twelfth Day of June, in the thirty-seventh Year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith and so forth. Before the Honorable William Osgoode, Chief Justice of Our said Sovereign Lord the King, of his Province of Lower-Canada, and the Honorable Thomas Dunn and Pierre Amable Debonne, Justices of Our said Sovereign Lord the King, of his Court of King's Bench of and for the said District of Quebec, and others their Fellow Justices and Commissioners of Our said Lord the King, assigned by Letters Patent under his Great Seal of his said Province of Lower-Canada, made to them and others, and any three or more of them, (of whom our said Sovereign Lord the King willed, the aforesaid Honorable William Osgoode or the Honorable James Monk, Chief Justice of our said Sovereign Lord the King of his Court of King's Bench of and for the District of Montreal, in the said Province, in the same Letters Patent named and appointed to be one) to enquire, by the Oath of good and lawful Men of the District of Quebec, in the said Province of Lower-Canada, of all High Treasons, and of all Misprisions of High Treasons, or of any of of them, within the said District of Quebec (as well within Liberties as without) by whomsoever, and in what Manner soever done, committed or perpetrated, when, how and after what Manner, and of all other Articles and Circumstances concerning the Premises and every or any of them in any Manner whatsoever; and the said Treasons, and Misprisions of Treasons, according to the Laws and Customs of England, and of the said Province of Lower-Canada for this Time to hear and determine by the Oath of Francis Le Maistre, Peter Stuart, Jacques Perrault, Nathaniel Taylor, Louis Germain, John Coffin, Hyppolite Laforce, Comte Dupré, Charles Pinguet, Louis Turgeon, James Frost, George Allsopp, Louis Duniere, Jacob Danford, Augustin J. Raby, Kenelm Chandler, John Craigie, Alexandre Dumas, François Filion, John Purfs, Pierre Langlois and Joseph Drapeau, Esquires, good and lawful Men of the aforesaid District of Quebec, now here sworn and charged to enquire, for Our said Sovereign Lord the King, for the Body of the said District, touching and concerning the Premises in the said Letters Patent mentioned. It is presented in manner and form as followeth, that is to say.

DISTRICT

mies is, of itself, if proved, a substantial and sufficient Branch of Treason.

Notwithstanding the Statute of Edward III. had defined, with sufficient Precision, the several Offences that should constitute the Crime of Treason, yet, several additional declaratory Acts were passed and new Treasons were added by subsequent Princes. Many Sovereigns acquired a deserved Popularity at the Commencement of their Reigns by procuring the Repeal of some of the Treasons created in the Time of their Predecessors. The first Act of Queen Mary was, to repeal all Treasons but only such as be declared & expressed to be Treasons by the Statute made, as the Act expresses it, " in the 25th. Year of the Reign of the most noble King, " of famous Memory, King Edward III." But some of the repealed Treasons, especially those respecting the Coin, were soon re-enacted. In the Factioned Struggles that prevailed during the Reigns of Charles II. and James II. many oppressive Measures took Place as each Party obtained the Superiority. In the Reign of James the II. it was found that the Safety of the Subject was too much in the Power of vindictive Ministers. To remedy this Evil, an Act was passed in the Reign of King William III. for the regulating of Trials, in Cases of High Treason, in which many Salutory Provisions are made for the Protection of the Party accused, and many just and reasonable Means of Defence were directed to be admitted, which had formerly been disallowed; and it is specially enacted that no Person whatsoever shall be indicted, tried, or attainted of High Treason, but by and upon the Oaths and Testimony of two lawful Witnesses, either both of them to the same overt Act, or one of them to one, and another of them to another overt Act of the same Treason. The different Kinds or Heads of Treason have already been mentioned and the true Construction of this Clause of the Statute may be explained by a Case put from the Bench, if an Indictment for compassing the King's Death, the being armed with a dagger for the purpose of killing the King, be laid as an overt Act, and the being armed with a Pistol for the same Purpose as another overt Act; it was held that the proving of one of the overt Acts by one Witness, and the other by a different Witness was Proof by two Witnesses within the meaning of the Statute. By an Act passed in the 7th Year of Queen Anne, which is now in Force (it being enacted that it should take Effect after the Death of the Pretender) further Provision is made in behalf of Parties indicted for High Treason, which, as they are no where connected with the Duties of the Grand Inquest, it were needless to

to mention altho' they must necessarily be observed on the Part of the Prosecution. The Comments made by the intelligent and humane Author of the Discourse on High Treason, on the probable Effects of this Statute, it is hoped will not be confirmed in this Province. Had he lived to these Times, perhaps he would have Reason to suspect that some of the bad Ends he deprecated have already been accomplished.

Having taken up so much of Your Time, Gentlemen. I shall conclude my Observations by remarking, that the Duties of your Office do at this Time, involve the most serious and important Considerations. Should you have Reason to Credit the Evidence that will probably be produced, you will find that a Design has been some time since on foot, which, if carried into successful Execution, would subvert the Government under which we live, and endanger the Life, Liberty, and Property of all his Majesty's faithful Subjects in this Province. These are serious Consequences. But as it would ill become a Court of Justice to excite your feelings by a Representation of projected Evils, so, I trust, it is unnecessary to recommend, you to enter upon the Enquiry with Calmness and Deliberation. Gentlemen of Your Education and Experience will of course pay little Regard to idle Reports, or vain Surmises, should the Charge be thus weakly supported; but should probable Evidence be laid before you by two Witnesses tending to fix the Perpetration of any one of the overt Acts, charged in the Indictment, for, due Proof of any one of the overt Acts will support a Conviction, you will think it incumbent on you to prefer an Accusation against the Party that his Innocence or Guilt may appear by a Verdict of the Country.

Gentlemen, I will detain you no longer, being fully persuaded that, in the Performance of your Duty, you will conduct yourselves to the Discharge of your own Consciences and the Satisfaction of the Province.

THE Court adjourned to Wednesday, the 14th. of June.

WEDNESDAY, the 14th. June. The Grand Jury presented a Bill, of Indictment against DAVID McLANE, for *High Treason*, which they unanimously found a *true bill*.

On Motion of Mr. Attorney General, a Rule was made in the following words,

" It

DISTRICT OF QUEBEC, to wit.

THE Jurors for our Sovereign Lord the King, upon their Oath present, that, on the first Day of March, in the thirty-seventh Year of the Reign of our Sovereign Lord George the third, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith and so forth, and long before and continually from thence hitherto, an open and public War was and yet is carried on between our said Sovereign Lord the King, and the Persons exercising the Powers of Government in France, that is to say, at the Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, and that David McLane, late of the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, Merchant, well knowing the Premises, but not regarding the Duty of his Allegiance, nor having the Fear of God in his Heart and being moved and seduced by the Instigation of the Devil as a false Traitor against our said Sovereign Lord the King, wholly withdrawing his Allegiance and contriving and with all his Strength intending the Peace and common Tranquillity of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King to disquiet, molest and disturb; and to depose our said Sovereign Lord the King from the Royal State, Title Power and Government of the Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to bring and put our said Sovereign Lord the King to Death, heretofore, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the said Parish of Notre Dame de Quebec commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, maliciously and traiterously, with Force and Arms, did compass, imagine and intend to depose our said Sovereign Lord the King from the Royal State, Title, Power and Government of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to bring and put our said Sovereign Lord the King to Death.

AND TO FULFILL, perfect and bring to Effect his most evil and wicked Treason and treasonable Compassing and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March

in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did, with divers other Persons, whose Names are to the said Jurors unknown, conspire, consult, consent and agree to cause, procure, solicit and incite the said Persons exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, to invade this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, in an hostile Manner, and to carry on the War aforesaid against our said Sovereign Lord the King within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect and bring to Effect his most evil and wicked Treason and treasonable Compassings and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the War aforesaid, to wit, on the said first Day of March in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that Day, at the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did solicit and incite the said Persons exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, to invade this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, in an hostile Manner, and to carry on the said War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect and bring to Effect his most evil and wicked Treason and treasonable Compassings and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the War aforesaid, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers Days as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did, with the aforesaid Persons exercising the Powers of Government in France, and being,

as aforesaid, Enemies of our said Sovereign Lord the King, conspire, consult, consent and agree to raise, levy and make Insurrection, Rebellion and War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King and to invade the said Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, with Ships and armed Men; and to carry on the said War against our said Sovereign Lord the King within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect, and bring to Effect his most evil and wicked Treason and treasonable Compassing and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did, with divers other Persons, whose Names are to the said Jurors unknown, conspire, consult, consent and agree to raise, levy and make Insurrection, Rebellion and War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King and to aid and assist and to seduce, persuade and procure divers Subjects of our said Sovereign Lord the King, to aid and assist the said Persons exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King as aforesaid, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King and in the prosecution of the War aforesaid against our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect and bring to Effect his most evil and wicked Treason and treasonable Compassings and Imaginations aforesaid. He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously, did solicit, persuade, move and incite divers Subjects of our said Sovereign Lord the King, to levy and make

make Insurrection, Rebellion and War against our said Sovereign Lord the King within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to aid and assist the said Persons, so as aforesaid, exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King as aforesaid, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and in the Prosecution of the said War against our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect and bring to Effect his most evil and wicked Treason, and treasonable Compassing and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did solicit, persuade, move and incite divers Persons, (not being Subjects of our said Sovereign Lord the King, to levy and make Insurrection and War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to aid and assist the said Persons, so as aforesaid exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King as aforesaid, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and in the Prosecution of the War aforesaid, against our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect and bring to Effect his most evil and wicked Treason and treasonable Compassing and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously, did get ready, raise and engage several Men, whose Names are to the said Jurors unknown, to take up Arms and to levy and wage War against our said Sovereign Lord the King, within this Province of Lower Canada, Part of the Dominions of our said Sovereign Lord the King, and to aid and assist
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the said Persons, exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King, as aforesaid, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and in the Prosecution of the said War against our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect and bring to Effect his most evil and wicked Treason and treasonable Compassing and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the War aforesaid, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other days as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did consult, and conspire with divers Persons, whose Names are to the said Jurors unknown, Arms and Ammunition secretly and clandestinely to convey and bring into this Province of Lower-Canada, so as aforesaid Part of the Dominions of our said Sovereign Lord the King, with Intent therewith War, Insurrection and Rebellion against our said Sovereign Lord the King within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King to levy and make and to aid and assist the said Persons, exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King and in the prosecution of the War aforesaid against our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect, and bring to Effect his most evil and wicked Treason, and treasonable Compassing and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did enquire of divers Persons, and did collect and obtain Information and Intelligence, whether the Subjects of our said Sovereign Lord the King in this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, were, or were not, well affected to our said

said Sovereign Lord the King and his Government, and were, or were not likely to join with, and assist the Forces of the said Persons exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, in Case an hostile Invasion should be by them made into this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, with the Intent to communicate, notify and reveal, and to cause to be communicated, notified and revealed such Intelligence and Information to the said Persons, exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, for the Aid, Assistance, Direction and Instruction of them, the said Enemies of our said Sovereign Lord the King, in their Conduct and Prosecution of the said War against our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect and bring to Effect his most evil and wicked Treason, and treasonable Compassing and Imaginations aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did obtain and acquire Knowledge of the Strength of the City of our Sovereign Lord the King, called Montreal, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and how the same City of Montreal might be attacked and invested, and into the Hands and Possession of Enemies and false Traitors against our said Sovereign Lord the King, be taken and seized, with Intent to communicate, notify and reveal, and to cause to be communicated, notified and revealed such the aforesaid knowledge, so by him, the said David McLane, obtained and acquired, to the said Persons exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, for the Aid, Assistance, Direction and Instruction of the said Persons exercising the Powers of Government in France, and being as aforesaid Enemies of our said Sovereign Lord the King, in their Conduct and Prosecution of the said War against our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect, and bring to Effect his most evil and wicked Treason and treasonable Compassing and Imaginations

tions aforeſaid, He, the ſaid David McLane, as ſuch falſe Traitor as
 aforeſaid, during the War aforeſaid, to wit, on the ſaid firſt Day
 of March, in the thirty-ſeventh Year aforeſaid, and on divers other
 Days as well before as after that Day, with Force and Arms, at the
 Pariſh of Notre Dame de Quebec, commonly called the Pariſh
 of Quebec, in the County of Quebec in the Diſtrict of Quebec
 aforeſaid, maliciously and traiterouſly did depart from the ſaid
 Pariſh of Notre Dame de Quebec, commonly called the Pariſh
 of Quebec, towards foreign Parts, He, the ſaid David McLane,
 having then and there in the Poſſeſſion of him, the ſaid David
 McLane, Information and Intelligence whether the Subjects of our
 ſaid Sovereign Lord the King, in this Province of Lower-Canada,
 Part of the Dominions of our ſaid Sovereign Lord the King, were
 or were not well affected to our ſaid Sovereign Lord the King
 and his Government, and were, or were not likely to join with
 and aſſiſt the Forces of the ſaid Perſons, exerciſing the Powers
 of Government in France, and being as aforeſaid Enemies of our
 ſaid Sovereign Lord the King, in Caſe an hoſtile Invaſion ſhould
 be, by them, made into this Province of Lower-Canada, Part of the
 Dominions of our ſaid Sovereign Lord the King; and having
 alſo then and there in the Poſſeſſion of him, the ſaid David McLane,
 Knowledge of the Strength of the City of our Sovereign Lord the
 King, called Montreal, within this Province of Lower-Canada,
 Part of the Dominions of our ſaid Sovereign Lord the King, and
 how the ſame City of Montreal might be attacked and inveſted
 and into the Hands and Poſſeſſion of Enemies and falſe Traitors
 againſt our ſaid Sovereign Lord the King be taken and ſeized, with
 Intent to communicate, notify and reveal, and to cauſe to be com-
 municated; notified and revealed ſuch Intelligence, Information
 and Knowledge to the ſaid Perſons exerciſing the Powers of Go-
 vernment in France, and being Enemies of our ſaid Sovereign Lord
 the King as aforeſaid, for the Aid, Aſſiſtance, Direction and In-
 ſtruction of the ſaid Perſons exerciſing the Powers of Government
 in France, and being, as aforeſaid, Enemies of our ſaid Sovereign
 Lord the King, in the Conduct and Proſecution of the ſaid War
 againſt our ſaid Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect and bring to Effect his moſt
 evil and wicked Treason and treaſonable Compaſſing and Imagi-
 nations aforeſaid, He, the ſaid David McLane, as ſuch falſe Trai-
 tor as aforeſaid, during the War aforeſaid, to wit, on the ſaid
 firſt Day of March, in the thirty-ſeventh Year aforeſaid, and on
 divers other Days as well before as after that Day, maliciously
 and

and traiterously, with Force and Arms, the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, under the false, feigned and assumed Name of JACOB FELT secretly and clandestinely, from foreign Parts, did enter.

AND FURTHER TO FULFILL, perfect and bring to Effect his most evil and wicked Treason and treasonable Compassing and Imaginations aforesaid, He, the said David M'Lane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously, did, with divers other Persons, whose Names are to the said Jurors unknown, conspire, consult, consent and agree the walled and garrisoned City of Quebec, in the County of Quebec, in the District of Quebec aforesaid, one of the Fortresses or fortified Places of our said Sovereign Lord the King to seize, take and wrest by surprise from the Hands and Possession of our said Sovereign Lord the King, to cause a miserable Slaughter of, and to destroy the faithful Subjects of our said Sovereign Lord the King, and the said walled and garrisoned City of Quebec into the Hands and Possession of the Persons exercising the Powers of Government in France, and being, so as aforesaid, Enemies of our said Sovereign Lord the King, to deliver for the Aid and Assistance of the said Persons so as aforesaid, exercising the powers of Government in France, and being, so as aforesaid, Enemies of our said Sovereign Lord the King, in the Prosecution of the said War against our said Sovereign Lord the King.

AND FURTHER TO FULFILL, perfect, and bring to effect his most evil and wicked Treason, and treasonable Compassing and Imaginations aforesaid, He, the said David M'Lane as such false Traitor as aforesaid, with Force and Arms, during the said War, to wit, on the tenth Day of May in the thirty-seventh Year aforesaid, the walled and garrisoned City of Quebec, in the County of Quebec, in the District of Quebec aforesaid, one of the Fortresses, or fortified places of our said Sovereign Lord the King, maliciously and traiterously did enter, with Intent the said walled and garrisoned City of Quebec, as aforesaid one of the Fortresses or fortified Places of our said Sovereign Lord the King to seize, take, and
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wrest by surprize from the Hands and Possession of our said Sovereign Lord the King, and to cause a miserable Slaughter of, and to destroy the faithful Subjects of our said Sovereign Lord the King and the said walled and garrisoned City of Quebec into the Hands and Possession of the Persons exercising the Powers of Government in France, and being, so as aforesaid, Enemies of our said Sovereign Lord the King, to deliver, for the Aid and Assistance of the said Persons, so as aforesaid, exercising the Powers of Government in France, and being, so as aforesaid, Enemies of our said Sovereign Lord the King, in the Prosecution of the said War, against our said Sovereign Lord the King, in Contempt of our said Sovereign Lord the King and his Laws, to the Evil example of all others in the like Case offending, contrary to the Duty of the Allegiance of him, the said David M'Lane, against the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity:

AND THE JURORS AFORESAID, upon their Oath aforesaid, do further present, that on the first Day of March, in the thirty-seventh Year aforesaid, and long before and continually from thence hitherto, an open and public War was, and yet is prosecuted and carried on between our said Sovereign Lord the King and the Persons exercising the Powers of Government in France, to wit, at the Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, and that the said David M'Lane, well knowing the Premises, but not regarding the Duty of his Allegiance, nor having the Fear of God in his Heart and being moved and seduced by the Instigation of the Devil, as a false Traitor against our said Sovereign Lord George the Third, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, and so forth; and wholly withdrawing the Allegiance which he, the said David M'Lane, should, and of Right ought to have borne towards our said Sovereign Lord the King, and contriving and with all his Strength intending to aid and assist the said Persons exercising the Powers of Government in France, and being as aforesaid Enemies of our said Sovereign Lord the King in the Prosecution of the said War against our said Sovereign Lord the King, heretofore and during the War aforesaid, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that Day, with Force and Arms, at the Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in

the County of Quebec, in the District of Quebec aforesaid, maliciously and traiterously was adhering to, aiding and comforting the said Persons exercising the Powers of Government in France, then being Enemies of our said Sovereign Lord the King as aforesaid.

AND IN THE PROSECUTION, Performance and Execution of his Treason and traiterous Adhering aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that Day, at the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously, did, with divers other Persons, whose Names are to the said Jurors unknown, conspire, consult, consent, and agree to cause, procure, solicit and incite the said Persons, exercising the Powers of Government in France and being, as aforesaid, Enemies of our said Sovereign Lord the King, to invade this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, in an hostile Manner, and to carry on the War aforesaid against our said Sovereign Lord the King within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of His Treason, and traiterous Adhering aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that Day, at the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did solicit and incite the said Persons exercising the Powers of Government in France and being, as aforesaid, Enemies of our said Sovereign Lord the King, to invade this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, in an hostile Manner, and to carry on the said War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King.

AND

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traitorous Adhering aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did, with the aforesaid Persons, exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, conspire, consult, consent and agree to raise, levy and make Insurrection, Rebellion and War against our said Sovereign Lord the King within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to invade the said Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, with Ships and armed Men, and to carry on the said War against our said Sovereign Lord the King within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traitorous Adhering aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that Day, at the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously, did, with divers other Persons, whose Names are to the said Jurors unknown, conspire, consult, consent and agree to rise, levy and make Insurrection, Rebellion and War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to aid and assist, and to seduce and persuade, and procure divers Subjects of our said Sovereign Lord the King to aid and assist the said Persons exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King as aforesaid, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and in the Prosecution of the War aforesaid against our said Sovereign Lord the King.

AND

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traiterous Adhering afore said, He, the said David McLane, as such false Traitor as afore said, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year afore said, and on divers other Days, as well before as after that Day, at the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec afore said, with Force and Arms, maliciously and traiterously, did solicit, persuade, move and incite divers Subjects of our said Sovereign Lord the King, to levy and make Insurrection, Rebellion and War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to aid and assist the said Persons, so as afore said, exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King as afore said, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and in the Prosecution of the said War against our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traiterous Adhering afore said, He, the said David McLane, as such false Traitor as afore said, during the said War, to wit, on the said first day of March, in the thirty-seventh Year afore said, and on divers other Days as well before as after that Day, at the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec afore said, with Force and Arms, maliciously and traiterously did solicit, persuade, move and incite divers Persons, (not being Subjects of our said Sovereign Lord the King) to levy and make Insurrection and War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to aid and assist the said Persons, so as afore said, exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King as afore said, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and in the Prosecution of the War afore said, against our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason, and traiterous Adhering afore said, He, the said David McLane, as such false Traitor as afore said, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year

Year aforesaid, and on divers other Days, as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did get ready, raise and engage several Men, whose Names are to the said Jurors unknown, to take up Arms and to levy and wage War against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and to aid and assist the said Persons exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King as aforesaid, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and in the Prosecution of the said War against our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of His Treason and traiterous Adhering aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did consult and conspire with divers Persons, whose Names are to the said Jurors unknown, Arms and Ammunition secretly and clandestinely to convey and bring into this Province of Lower-Canada, so as aforesaid Part of the Dominions of our said Sovereign Lord the King, with Intent, therewith War, Insurrection and Rebellion, against our said Sovereign Lord the King, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, to levy and make, and to aid and assist the said Persons, exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, in an hostile Invasion of this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and in the Prosecution of the War aforesaid, against our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traiterous Adhering aforesaid, He, the said David McLane, as such false Taitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days, as well before as after that

that Day at the aforesaid Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, with Force and Arms maliciously and traiterously did enquire of divers Persons, and did collect and obtain Information and Intelligence, whether the Subjects of our said Sovereign Lord the King, in this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, were or were not well affected to our said Sovereign Lord the King and his Government, and were or were not likely to join with and assist the Forces of the said Persons exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, in Case an hostile Invasion should be, by them, made into this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, with Intent to communicate, notify and reveal, and cause to be communicated, notified and revealed such Intelligence and Information to the said Persons exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, for the Aid, Assistance, Direction and Instruction of them, the said Enemies of our said Sovereign Lord the King, in their Conduct and Prosecution of the said War against our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traitorous Adhering aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, at the said Parish of Notre-Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec in the District of Quebec aforesaid, with Force and Arms, maliciously and traiterously did obtain and acquire Knowledge of the Strength of the City of our Sovereign Lord the King, called Montreal, within this Province of Lower Canada, Part of the Dominions of our said Sovereign Lord the King, and how the same City of Montreal might be attacked and invested and into the Hands and Possession of Enemies and false Traitors against our said Sovereign Lord the King be taken and seized, with Intent to communicate, notify and reveal, and to cause to be communicated, notified and revealed such the aforesaid Knowledge so by him, the said David McLane, obtained and acquired, to the said Persons exercising the Powers of Government in France, and being as aforesaid Enemies of our said Sovereign Lord the King, for the Aid, Assistance, Direction and Instruction of the said Persons exercising the Powers of Government

ment in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, in their Conduct and Prosecution of the said War against our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traitorous Adhering aforesaid, He, the said David McLane, as such false Traitor as aforesaid, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year aforesaid, and on divers other Days as well before as after that Day, with Force and Arms, at the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec aforesaid, maliciously and traiterously did depart from the said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, towards foreign Parts, He, the said David McLane, having then and there in the Possession of him, the said David McLane, Information and Intelligence whether the Subjects of our said Sovereign Lord the King, in this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, were or were not well affected to our said Sovereign Lord the King and his Government, and were, or were not likely to join with and assist the Forces of the said Persons, exercising the Powers of Government in France, and being, as aforesaid, Enemies of our said Sovereign Lord the King, in Case an hostile Invasion should be, by them, made into this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King; and having also then and there in the Possession of him, the said David McLane Knowledge of the Strength of the City of our said Sovereign Lord the King, called Montreal, within this Province of Lower-Canada, Part of the Dominions of our said Sovereign Lord the King, and how the same City of Montreal might be attacked and invested, and into the Hands and Possession of Enemies and false Traitors against our said Sovereign Lord the King, be taken and seized, with Intent to communicate, notify and reveal, and to cause to be communicated notified and revealed such Intelligence, Information and Knowledge, to the said Persons exercising the Powers of Government in France, and being Enemies of our said Sovereign Lord the King, as aforesaid for the Aid, Assistance, Direction and Instruction of the said Persons exercising the Power of Government in France, and being as aforesaid Enemies of our said Sovereign Lord the King, in the Conduct and Prosecution of the said War against our said Sovereign Lord the King.

AND

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traiterous Adhering afore said, He, the said David McLane, as such false Traitor as afore said, during the War, afore said, to wit, on the said first Day of March, in the thirty-seventh Year afore said, and on divers other Days as well before as after that Day, maliciously and traiterously with Force and Arms, the afore said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec afore said, under the false, feigned and assumed Name of JACOB FELT, secretly and clandestinely from foreign Parts did enter.

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traiterous Adhering afore said, He, the said David McLane, as such false Traitor as afore said, during the said War, to wit, on the said first Day of March, in the thirty-seventh Year afore said, and on divers other Days, as well before as after that Day, at the afore said Parish of Notre Dame de Quebec, commonly called the Parish of Quebec, in the County of Quebec, in the District of Quebec afore said, with Force and Arms, maliciously and traiterously did, with divers other Persons, whose Names are to the said Jurors unknown, conspire, consult, consent and agree the walled and garrisoned City of Quebec, in the County of Quebec, in the District of Quebec afore said, one of the Fortresses, or fortified Places of our said Sovereign Lord the King to seize, take and wrest by surprise from the Hands and Possession of our said Sovereign Lord the King, to cause a miserable Slaughter of, and to destroy the faithful Subjects of our said Sovereign Lord the King, and the said walled and garrisoned City of Quebec into the Hands and Possession of the Persons exercising the Powers of Government in France, and being, so as afore said, Enemies of our said Sovereign Lord the King, to deliver, for the Aid and Assistance of the said Persons, so as afore said, exercising the Powers of Government in France, and being, so as afore said, Enemies of our said Sovereign Lord the King, in the Prosecution of the said War against our said Sovereign Lord the King.

AND IN FURTHER PROSECUTION, Performance and Execution of his Treason and traiterous Adhering afore said, He, the said David McLane, as such false Traitor as afore said, with Force and Arms, during the said War, to wit, on the tenth Day of May, in the thirty-seventh Year afore said, the walled and garrisoned City of Quebec, in the County of Quebec, in the District of Quebec

Quebec aforesaid, one of the Fortresses, or fortified Places of our said Sovereign Lord the King, maliciously and traiterously did enter, with the Intent the said walled and garrisoned City of Quebec, as aforesaid, one of the Fortresses or fortified Places, of our said Sovereign Lord the King, to seize, take and wrest by Surprise from the Hands and Possession of our said Sovereign Lord the King, to cause a miserable Slaughter of, and to destroy the faithful Subjects of our said Sovereign Lord the King, and the said walled and garrisoned City of Quebec into the Hands and Possession of the Persons exercising the Powers of Government in France, and being so as aforesaid Enemies of our said Sovereign Lord the King, to deliver, for the Aid and Assistance of the said Persons, so as aforesaid, exercising the Powers of Government in France, and being, so as aforesaid, Enemies of our said Sovereign Lord the King, in the Prosecution of the said War against our said Sovereign Lord the King, in Contempt of our said Sovereign Lord the King and his Laws, to the evil Example of all others in the like Case offending, contrary to the Duty of the Allegiance of him, the said David M^cLane, against the Form of the Statute in such Case made and provided, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity:

J. SEWELL.

DAVID LYND, Clk.

*Attorney General of our Sovereign
Lord the King, of and for his
Province of Lower-Canada.*

To this Indictment the Prisoner pleaded NOT GUILTY, and for Trial having put himself on GOD and THE COUNTRY. The following Rule was made:

“ It is ordered, on Motion of Mr. Attorney General, that the
“ Trial of the Prisoner, David M^cLane, be on Friday, the seventh
“ Day of July next, and that a Precept in the Nature of a *Venire*
“ *facias* do Issue to the Sheriff of the District of Quebec, for sum-
“ moning the Petit Jurors, returnable on the same seventh Day of
“ July, at seven of the Clock in the Morning.—
To which Time the Court then adjourned.

E

FRIDAY,

FRIDAY, 7th. JULY, 1797.

PRESENT,

THE CHIEF JUSTICE, †

THE CHIEF JUSTICE OF MONTREAL, ‡

MR. JUSTICE DUNN,

HUGH FINLAY,

FRANÇOIS BABY,

ANTOINE J. DUCHESNAY,

JOHN YOUNG.

} Esquires.

Counsel for the Crown.

MR. ATTORNEY GENERAL,

MR. CARON,

Counsel for the Prisoner.

MR. PYKE,

MR. FRANKLIN,

The Court being opened at seven o'Clock precisely,—and the Prisoner, DAVID M'LANE, set to the Bar, the Jurors, impannelled by the Sheriff were called over; eleven were challenged on the Part of the Crown and twenty-four by the Prisoner. The following Gentlemen were sworn.—

THE JURY,

John Blackwood,

John Crawford,

John Painter,

David Munro,

John Mure,

John Jones,

James Irvine,

James Orkney,

James Maſon Goddard,

Henry Cull,

Robert Morrogh,

George Symes.

MR. LYND *— David M'Lane hold up your Hand.

Gentlemen of the Jury, the Prisoner, DAVID M'LANE stands indicted. &c. (*Here the Clerk of the Arraignment read the Indictment*). Upon this Indictment he hath been arraigned, and upon his Arraignment hath pleaded *not Guilty* and for his Trial hath put himself upon GOD and the COUNTRY, which Country you are—Your charge is to enquire, whether he be guilty of the Felony and High Treason whereof he stands indicted, or not guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements he had at the Time of the Felony and High Treason committed or at any Time since. If you find him not guilty, you are to enquire whether he fled for it. If you find that he did fly for it, you shall enquire of his Goods and Chattels as if you had found him Guilty—If you find him not guilty and that he did not fly for it, say so and no more.—Hear your Evidence.

MR.

† The Honorable William Osgoode.

‡ The Honorable James Monk.

* Clerk of the Arraignment.

MR. CARON.

May it please your Honors, and You
Gentlemen of the Jury,

Having the Honor to be of Counsel for the Crown in this Case, it becomes my Duty to open to you the Indictment found by the Grand Inquest of this District, against the Prisoner at the Bar. I certainly must regret that, being a Canadian, I have to address you in a language with which I am not so conversant as with my native Tongue, a Circumstance which, perhaps, will not permit me to perform the Duty assigned to me with that Precision and Propriety which the present Case deserves. In this Particular I must beg Leave to solicit your Indulgence.

Gentlemen,

The Prisoner at the Bar, DAVID M'LANE, stands charged with the highest Crime known in our Law, High Treason. The first Count of the Indictment sets forth, that, during the present War between our Sovereign Lord the King and the Persons exercising the Powers of Government in France, He, the Prisoner, withdrawing his Allegiance, as a false Traitor against his Majesty and intending to depose him, did traiterously compass and imagine his Death.

The overt Acts on this Count are fourteen in number, and this in Substance.

- 1st. That He conspired *with divers persons unknown* to solicit the Enemies of the King to invade the Province.
- 2d. That He did solicit *the King's Enemies* to invade the Province.
- 3d. That He conspired *with the King's Enemies* to excite a Rebellion in the Province, and to invade the Province with Ships and armed Men.
- 4th. That He conspired *with divers persons unknown*, to raise a Rebellion in the Province, to aid and assist, and to seduce the King's Subjects, to aid and assist the Enemy in an hostile Invasion of the Province.
- 5th. That He solicited and incited *divers of the King's Subjects* to levy War and Rebellion against the King in his Province of Lower-Canada, and to aid and assist the Enemy in an hostile Invasion of the same Province.
- 6th. That He solicited and incited *divers Persons, not being Subjects of his Majesty*, to levy War against the King in this Province

vince, and to aid and assist the Enemy in an hostile Invasion of the Province.

- 7th. That He made ready and raised *several Men unknown*, to levy War against the King within the Province and to assist the Enemy in an hostile Invasion.
- 8th. That He conspired with *divers persons unknown*, to convey into the Province, Arms and Ammunition, with Intent therewith to wage War against the King and to assist the Enemy in an hostile Invasion.
- 9th. That He collected Information whether the King's Subjects were or were not well affected, and whether they would or would not join the Enemy in an hostile Invasion of the Province with Intent to communicate it to the Enemy.
- 10th. That He acquired Knowledge of the Strength of the King's City called Montreal, and how it might be attacked and taken by the Enemy, with Intent to communicate it to the Enemy.
- 11th. That being possessed of the Information and Knowledge set forth in the two last mentioned overt Acts, he departed from the Parish of Quebec towards foreign Parts, with Intent to communicate it to the Enemy.
- 12th. That He entered the Parish of Notre Dame de Quebec, secretly and clandestinely, under the feigned and assumed name of JACOB FELT.
- 13th. That He conspired with *divers persons unknown*, to seize by Surprise the walled and garrisoned City of Quebec, one of the King's Fortresses or fortified Places; to cause a miserable Slaughter of and to destroy the King's faithful Subjects, and to deliver the City into the Hands of the Enemy for the Aid and Assistance of the Enemy in the present War.
- 14th. That He entered the walled and garrisoned City of Quebec with intent to seize it by Surprise, to cause a miserable Slaughter of and to destroy the King's faithful Subjects and to deliver the City into the Hands of the Enemy for the Aid and Assistance of the Enemy in the present War.

Gentlemen.

Gentlemen,

There is another Count, charging the Prisoner with adhering to the King's Enemies during the present War, and the overt Acts laid are the same as those laid upon the first Count.

To this Indictment the Prisoner hath pleaded *not guilty*. We, who are of Counsel for the Crown will call our Witnesses, and if they prove the Charge against him, it will be your Duty to find him guilty.

MR. ATTORNEY GENERAL, *

May it please your Honors and you, Gentlemen of the Jury.—

The Duty of the Office which I have the Honor to hold, under his Majesty's Government in this Province, calls me at this Period, of the present Prosecution, to support the Indictment, which has just been opened by my learned Friend. To support an Indictment which charges the Prisoner with the highest Crime on which a Canadian Jury can give a Verdict, and which requires from you, Gentlemen, who are now impannelled, to try and make true Deliverance between our Sovereign and the unfortunate Prisoner at the Bar; the most serious Attention; not particularly, but generally and equally, to the Interests of the Crown on one Hand and to those of the Prisoner on the other. We are concerned for the Prosecution, but we cannot wish to deprive the Prisoner of any Privilege to which he is entitled; we can only ask from You an impartial Attention to what we shall submit to your Consideration, and we are well satisfied that the same impartial Attention should be paid to whatever may be adduced in his Defence. We expect at your Hands a true Verdict according to the Evidence.

Gentlemen,

The Duty which you are now called upon to discharge is the most solemn of all that belong to you as Members of civil Society. For my own Part I feel most sensibly what the Importance of the present Case well merits and what my own official Situation at this Moment requires from me; and I well know that the Duty which in our respective Situations we are bound to fulfill is most unpleasant. Yet, however unpleasant it may be, whatever may be the Feelings with which its Execution is accompanied, it remains our Duty, and must therefore be performed. I can only wish that I may discharge mine as well as I am confident, You will discharge your's; For, whatever your Verdict may be, It will, I have the fullest

* J. Sewell, Esquire.

fullest Conviction, be that which the Justice of the Case will dictate, perfectly consistent with what You owe to the Prisoner and to the Country.

Gentlemen,

The Indictment charges the Prisoner with two distinct Species of Treason. The one, compassing the King's Death, the other, adhering to his Enemies; and both of them are founded on a very ancient and excellent Statute, the 25. Edward III. Chap. 2d. This Act, though one of the first upon the Statute Book, is, after the Experience of Ages, the Law of Treason at this Hour. By the Letter of the Statute, "when a Man doth compass or imagine the Death of our Lord the King" he is guilty of High Treason. It may appear at first view that these words restrict the Crime to an Intention to kill the King *personally*, but that in fact is not the Case, the Spirit of the Statute and the uniform Interpretation which a long Series of judicial Decisions have given to that Clause of it, which I have cited, extend the Description of this Species of Treason much beyond the limited Sense of personal Injury to the Sovereign. The King is partly a natural, partly a political Character, in the former he enjoys a natural life, in the latter a political Existence; and to aim at the Destruction of the one or of the other constitutes the Crime of High Treason, for, the political or civil Death, as well as the natural Death of the Sovereign is clearly within the Purview of the Statute. The Reason why the Statute has contemplated both, and why every Court of Justice, in which this Point has been canvassed have uniformly adhered to this Interpretation, appears to be obvious. An Attempt to destroy the political Existence of the Sovereign tends in fact to destroy the King in Person; for, Experience and recent Experience has shewn, that the interval between the dethronement of Princes and their Deaths is but short. But this is not the only Consequence; it tends also to annihilate the Constitution of Government of which the Sovereign is the Head. Great, therefore, and abominable as all Attempts against the Person of the King must be, the Crime of compassing his political Destruction, in its Consequence to Society, is equally atrocious.

Gentlemen, the second Count of the Indictment charges the Prisoner with an Adherence to the King's Enemies. By the Statute to which I have before referred "If a Man be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm or elsewhere" he is guilty of High Treason

Treason. With the Sanction of every judicial Authority which the Courts of our Mother Country can give, this Species of Treason has been uniformly held to include all, who being bound by any Description of Allegiance to our Sovereign, have given Aid or Assistance to his Enemies, in any Place whatever; and by the same Authority it has been repeatedly decided, that it is not necessary that such Aid or Assistance should actually be given, but that an Intention to aid or assist the King's Enemies, where the Party has done what lay in his Power to effect that Intention, was clearly Treason.

Gentlemen. Treason is distinguished from other Crimes by one Characteristick. Generally speaking, all Crimes which are known in the black Catalogue of human Depravity consist; according to our Law, in the Act of the Criminal. A bare Intention to commit an Offence is not punishable. In the particular Species of Treason charged in this Indictment it is otherwise; the Intention is sufficient; It is in Fact the Crime itself, and from this peculiar Circumstance arises the Necessity of that Part of Indictments for High Treason which are called the overt Acts. In this and in similar Prosecutions the Object of the Counsel for the Crown is to establish the treasonable Intention of the Accused; for, that constitutes his Offence. But as human Intellect can only Judge of the Operations of the mind by the Acts of the Body, they are compelled to prove the exterior Conduct of the Party indicted, and from thence to draw such Conclusions of his Intentions, as that Conduct will warrant. It is also their Duty to charge specifically in their Indictments, the several overt Acts which they expect to establish, and from which they mean to infer the Guilt of the Culprit. This is their Duty, because the Humanity of our Law has commanded that it should be so, to give the Prisoner an Opportunity of knowing pointedly the Grounds on which he is accused and to enable him to prepare his Defence.

Gentlemen. The course of Proceeding which I have just delineated, has been followed in the present Instance. Upon the first Count of the Indictment, to prove that the Prisoner has meditated the Subversion of the King's Government, and consequently intended the Destruction of his political Existence, fourteen overt Acts are laid; and the same overt Acts are repeated upon the second Count, to prove his Intention, to aid and assist the King's Enemies during the present War.—It is upon the Evidence

Evidence which we shall offer, of the Truth of these several overt Acts, that you, Gentlemen, of the Jury must form your Opinion, whether the Prisoner is guilty or not guilty.

Gentlemen, having stated thus much to You, I proceed, to submit the Substance of the several overt Acts here charged to your Consideration.

The first avers, that the Prisoner conspired with divers Persons unknown, to solicit the King's Enemies to invade the Province.

The second, that, in Pursuance of this Conspiracy, He did solicit the King's Enemies to invade the Province.

The third, that He entered into a similar Conspiracy, with the Republic of France, whose Subjects are the King's Enemies, not only to invade the Province, but to excite a Rebellion.

The fourth, that He conspired with divers other persons unknown, to excite a Rebellion in the Province, to aid, and assist, and to seduce the King's Subjects, to aid and assist the enemy in an hostile Invasion of the Province.

The fifth, that He incited and solicited *divers of the King's Subjects*, to join in the projected Rebellion, and to assist the Enemy in the projected Invasion.

The sixth, that he incited and solicited *divers persons not being the King's Subjects*, to levy War against his Majesty in this Province, and to aid and assist the Enemy in the projected Invasion.

The seventh, that He enlisted and made ready several Men, to assist in the projected Rebellion and Invasion.

The eighth, that He conspired with others to introduce Arms and Ammunition into the Province.

The ninth, that he collected Information whether the King's Subjects in Canada were or were not well affected to his Government, with Intent to communicate it to the Enemy for their Aid and Assistance.

The tenth, that He acquired knowledge of the Strength of the King's City called Montreal, and of the Means by which it might be invested by the Enemy, with Intent to communicate it to the Enemy for their Aid and Assistance.

The

The eleventh, that, being possessed of the Information and Knowledge set forth in the ninth and tenth overt Acts, He, with Intent to communicate them to the Enemy, departed from the Parish of Quebec towards Foreign Parts.

The twelfth, that, after leaving the Parish of Quebec, He again returned to it, secretly and clandestinely, under the assumed Name of JACOB FELT.

The thirteenth, that He conspired with divers Persons unknown, to seize by Surprise the walled and garrisoned City of Quebec, one of his Majesty's Fortresses, to cause a miserable Slaughter of His faithful Subjects, and to deliver the City into the Hands of the Enemy, for their Assistance in the Prosecution of the present War.

And the fourteenth avers, that on the tenth Day of May last He entered the City of Quebec, with Intent to seize it by Surprise, to cause a miserable Slaughter of the King's faithful Subjects, and, in order to assist the Enemy in the Prosecution of the present War, to deliver the City into their Hands.

Gentlemen, such are the Outlines of each particular overt Act, which resolve into these general Facts—That the Prisoner, in Concert with the King's Enemies, and others with whom we are not at War, entered into a Plan for the Destruction of His Majesty's Government in this Province, by Insurrection and Invasion; that, to accomplish this Object, He endeavoured to engage in his Design many of our own Subjects and many of our Neighbours in the Northern Parts of the States of New York and Vermont; enlisted some; formed a Scheme to introduce into the Province the necessary Arms and Ammunition; and came to Montreal from the United States of America in July and November last, in Order to gain Intelligence respecting the Strength of that City and the Dispositions of the Canadians towards the King's Government; that possessed of information on these Points, by which the future Conduct of the Plan was to be governed, He went back to the United States to communicate it to the French Minister at Philadelphia. That in further Prosecution of the same Plan, having conceived it practicable to surprise the Garrison of Quebec, He was determined to visit it; for, being on the Spot, he could with more Certainty adopt Measures to accomplish this Part of his

Design, that, with these views, He returned into the Province, and came secretly to Quebec in May last, having assumed the Name of Jacob Felt, to prevent Detection.

These, Gentlemen, are strong Facts, and it is a necessary inference to be drawn from them that the Intention of the Prisoner was treasonable. If he has done the utmost in his Power to excite a Rebellion in Canada and to assist the Republic of France in an intended Invasion of a Part of his Majesty's Dominions, with a View to depose him from his Government, this is clearly Treason; not only compassing the Death of the King, but an Adherence to his Enemies; and if the Averments which the several overt Acts contain are substantiated by Evidence clear and satisfactory to your minds, Treason of each Description will be proved against the Prisoner, and your Verdict must find him guilty.

Gentlemen, I am at this Moment opening to you the Nature of the Crime with which the Prisoner is charged; I shall in a few Minutes open the Nature of the Evidence which we shall submit to you in Support of the Accusation against him. Till that Evidence has been heard by you, from the Mouths of the Witnesses which we shall produce, I ask you to suspend your Judgment. It is not my Wish to exaggerate the Offence which is laid against the Prisoner, nor is it my Wish to infer, from what I am going to say, that he is guilty, because he is accused of the complicated Treason charged in the Indictment, till proved to be guilty, He certainly stands entitled to the full Presumption of Innocence; but I think myself justified in calling your Attention to what must have been the Situation of the Province and of us, its Inhabitants, had the Design, imputed to the Prisoner, succeeded but in Part. If a Rebellion had been raised or an Invasion attempted without Success, the Horrors of War, a Suspension of all civil Rights, a daily and miserable Apprehension of some Thing yet worse to come, were nevertheless unavoidable Consequences. But if the Attempt had succeeded, what a Scene of Misery must have been opened—Our Properties, our Lives and, what is still more valuable than either, the happy Constitution of our Country, all that Man can value in civil Society, all that attaches us to Existence, ourselves, our nearest and best Connections, our Government, our Religion, our rational Liberty, which we boast as British Subjects, all must have laid at the Mercy of the French Republic.—What that Mercy is, the black Annals of the Republic can best tell; It is there indelibly recorded for the Horror and Execration of Posterity, in the Blood of their lawful Sovereign,

reign, in the Blood of their Nobility, in the Blood of their Clergy, in the Blood of thousands of the best and most innocent of their Citizens.

Gentlemen, the Prisoner is generally supposed to be a Stranger to our Country, a Subject of the United States of America. I know not the Fact, nor do I know whether any Attempt will be made to prove that he is so; but be it as it may, it cannot avail him, no question can be raised whether He is a Native or a Foreigner. The Crime laid to his Charge is declared to have been committed within his Majesty's Dominion at the Parish of Quebec, within his Province of Lower-Canada, it is immaterial therefore whether, at the Time the Offence was committed He was a Subject or an Alien; If the former, he owed to his Majesty a Natural and permanent Allegiance, if the latter he owed an Allegiance local and temporary; And if he acted contrary to the Duty of either, he is guilty of High Treason. Much has heretofore been said and written on this Point; but it is now (so far as we are concerned with it) most clearly settled as I have stated it. A Philosopher may affect to discover a greater Degree of Turpitude in Treason committed by a Subject, who is bound to support that Society and Government of which he is a Member, than in Treason committed by an Alien who has no Tie of that Description: but if he should, his Opinion can have no Weight in a Court of Justice; for, in the Scale of legal Consideration no Distinction whatever can be found. In all Instances where we are traiterously betrayed, what Country gave Birth to the Traitor, is a Question of very little Importance; for, whether he was born a Subject or an Alien, his Treason and the Injury to the Public, remain the same.

Gentlemen, I shall not trouble you further with any general Observations on the Nature of the Offence now before You, or the Situation of the Prisoner, but shall proceed to lay before you, the Substance of the Evidence by which the Charges against him will be supported. Of the present War existing between his Majesty and the Persons exercising the Powers of Government in France, I shall not offer any Proof, it is a Fact of public Notoriety; nor shall I offer any particular Evidence of the different Conspiracies charged in the first, third, fourth, eighth, and thirteenth overt Acts. I shall rest them on the general Testimony which will be given; for, the Rule of Evidence on this Point is, that the Fact of Conspiring need not be directly proved, but may be collected by the Jury from collateral Circumstances.

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But to support the remaining Allegations of the Indictment, I shall produce seven Witnesses. William Barnard, Elmer Cushing, Francis Chandonet, Thomas Butterfield, Charles Frichette, John Black and Herman Witfius Ryland.

Gentlemen, It is uncertain at what Time the Prisoner first formed the Idea of exciting a Revolution in Canada, it was probably previous to the Period from which the Evidence commences, the first Information however, of which I am possessed, is dated in July last, and you will now receive it from the Witness, William Barnard, whom I shall first call. He saw the Prisoner at the Province Line, in July last, but was not acquainted with his Person, it seems, however, the Prisoner knew him well, for he came up to him and told him that He wished to have some private Conversation with him. Barnard walked a little Way with him upon the Shore of the Lake, and the Prisoner began his Conversation by informing him that He had something of Importance to communicate to him, that it was a Secret; that by telling it, He put his Life into his Hands. I cannot but remark to You here, that whenever the Prisoner has communicated his Design he has expressed himself sensible of its treasonable Nature, by avowing that His Life was certainly forfeited in Case of Discovery. You will find the same Declaration repeated to several other Witnesses.

Gentlemen, Barnard not knowing the Nature of his Secret, advised him, if it was so dangerous, to keep it. The Prisoner answered that he had made several Enquiries respecting him, and had been particularly recommended to him as a Man who might be trusted. He required only a solemn Promise that he would not divulge what he should tell him. This Promise Barnard gave, and the Prisoner then told him that he was there (upon the Province Line) for the Purpose of bringing about a Revolution in Canada. That he wished for Assistance and then pressed him to join in the Enterprize, which, however, he declined and left him. He saw the Prisoner a few Days afterwards in Montreal, and was again solicited by him to join him, but refused. The Prisoner then reminded him of his Promise and told him that if he kept his Secret he should be protected. Gentlemen, Mr. Barnard is a British Subject, and finding, that the Prisoner was seriously and systematically endeavouring to excite a Revolution, he gave immediate Information to a Magistrate, (Mr. M'Cord) and from that Moment the Eye of Government, unseen by the Prisoner, has constantly been fixed upon him. Mr. M'Cord advised Mr. Barnard to get from the Prisoner whatever Information he could, respecting

pecting his views.—The Prisoner appears to have left Montreal shortly after the last Conversation with Barnard, for, he did not see him again till the Month of November last, he then met him at La Prairie, near Montreal. The Prisoner recognised him, pressed him again to join him, and as an Inducement told him that Things were ripening fast. That Canada was already a conquered Country. That a French Army and Fleet would be in the River early in the Spring. He asked him to sound the Minds of the People, and to let him know who might be depended upon. Barnard declined. The Prisoner then told him that if he would engage to let him know where the Property of the Seminary and of the principal Merchants at Montreal was deposited, he should, at all Events, be protected. This was the last Interview which he had with Barnard; it happened, I think, on the Tenth of November.

Gentlemen, The next Witness which I propose to call is Elmer Cushing, and his Testimony is important as it goes to establish, not only the Prisoner's general Intention but who were his Employers. You will see from his Deposition, that, when Mr. Barnard saw the Prisoner at La Prairie, he was just returned from a second Visit to Montreal. The Prisoner came to the American Coffee-House, kept by Mr. Cushing, at Montreal, on the fifth of November last—He went out after Breakfast and was absent between four and five Hours. Upon his Return Mr. Cushing, who had known him for several Years, observed, that his Cloaths were covered with small Burrs and asked him where he had been; he said upon the Mountain. They had a little Conversation together, and upon Cushing's expressing some Fears respecting the Loyalty of the Canadians, the Prisoner desired to speak with him *in private*: they went into a back Room, and he then told him, as he had before told Barnard, that he had a Secret to communicate which, if known, would take his Life, and He required of him an Oath of Secrecy, which, after some Conversation, was taken by Mr. Cushing. The Prisoner then informed him, that he was employed by Mr. Adet the Minister of the French Republic at Philadelphia, to promote an intended Invasion of Canada, in the Spring, by a Fleet and an Army of ten thousand Men, to be assisted by the Canadians. He further told him that he had something in his Possession which would convince him that he was employed in the Business, and produced from between the soles of an old Shoe, which he took from his Saddle-Bags, a Paper signed "ADET" which certified that He (Mr. Adet) was interested in the Family Concerns of the Prisoner. This He informed him was intentionally written in an obscure Stile.

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It could not, He said, if it was found upon him be produced in Evidence against him. Gentlemen, those who are conversant in the State Trials, will recollect many Instances similar to this. A Law suit, Commerce and Family Concerns have been frequently used as Disguises to conceal a treasonable Design. The Prisoner told Mr. Cushing, that he was then going to Philadelphia, to communicate to Mr. Adet the Information of which He was already possessed, and should probably proceed to France, but should certainly revisit Canada in the Spring. He told him, that it was proposed to attack Quebec and Montreal at the same Time, and that he in Person should command against the latter. He informed him that he was then returned from the Mountain, which, he found, commanded the City entirely, that He had visited every part of it, (certainly, Gentlemen, in Contemplation of that Command which was promised him.) The Prisoner has known Mr. Cushing for several Years, and he seems, from this Cause, to have been more explicit with him than He was with Barnard. He told him they meant to seize all Property in the Hands of those who should be adverse to their Views, with which the Expence of the Expedition would be defrayed. That it was their Intention, in the first instance, effectually to secure the Priests and leading Characters of the Province, that it would indeed fare hard with all who were not favorable to their Cause. He further informed him, that he had engaged several Persons in the Scheme, who were resident near the Province Line, who had undertaken to enlist a certain Number of Men each. That the Arms and Ammunition for these Persons, and for the Canadians who should join, would be furnished from France, thro' the United States of America. He warmly pressed Mr. Cushing to engage in the Cause, which he declined. He asked him to give Information of the State of the Country from time to time, till the Spring, which he refused to do. He then told him, that the Opposition which some Persons were then making against the Road Act was very injurious to his undertaking, and proposed that Mr. Cushing should use his Influence to keep the Inhabitants quiet till the Spring, promising him Protection if He would. Mr. Cushing told him in Answer that he could have nothing to do with him. The Prisoner upon this, finding that He could not succeed in his Attempt to induce him to join in the Rebellion, menaced him with immediate Death if he divulged his Secret. He advised him to reflect seriously on what he had said, and added that he might perhaps send some Person to converse with him on the Subject in the

the Course of the Winter. That if He did send any Body, he would tell Mr. Cushing that he was come to talk with him on Family Matters. Mr. Cushing, very soon after this Conversation, gave Information to Government.

Gentlemen, what I have stated is the Substance of what passed between Mr. Cushing and the Prisoner, and you will observe that in these Conversations with Barnard and Cushing You have Evidence of the general Design (of subverting the Government by an Invasion and Rebellion) charged in the first, second, third and fourth overt Acts; of his having solicited two of the King's Subjects (for, Mr. Cushing is also one of our Subjects,) to join in his undertaking which is the Charge in the fifth overt Act, of his collecting Intelligence respecting the Loyalty of the King's Subjects, and the Strength of the City of Montreal and leaving the Province to communicate it to the Enemy, which are the Charges contained in the ninth, tenth and eleventh overt Acts. In the Conversation with Mr. Cushing the Prisoner makes Mention of Arms and Ammunition, to be introduced into the Country, thro' the United States, from France. The next Witness, Francis Chandonet, will detail to you the Mode in which he proposed to get them into Canada clandestinely. It seems that the Prisoner left La Prairie about the seventh or eighth of November, and proceeded towards Philadelphia, to communicate the Result of his Enquiries and Observations made in Canada, to Mr. Adet. He met Mr. Chandonet upon his Way, at a Place within the United States, but near to our Province Line. He wished, he told him, to speak with him *in private*. When alone, He informed Mr. Chandonet that he had a Secret of the utmost Importance to communicate to him, and asked a Promise of Secrecy which was refused. The Observation of the Prisoner's Answer was this, that he could not suppose Mr. Chandonet would be Accessary to the taking of his Life, and that he would therefore go on, he then told him that he was employed by the French, and had been in Canada to learn, whether the Inhabitants were well or ill affected to His Majesty's Government. This, Gentlemen, is direct Proof upon the ninth overt Act. He told Mr. Chandonet further, that he wished to introduce Arms and Ammunition into Canada, concealed in Rafts of Lumber and pressed him to carry in some in Rafts of Firewood from his farm at Saint Regis, upon the River Saint Lawrence, which, he said, would be supposed to be Rafts coming from Upper-Canada, and consequently would not be suspected. This, Gentlemen, is Proof as strong as any that can be adduced in Support of the eighth

eighth overt Act. Mr. Chandonet declined the Proposal. The Prisoner expressed his Sorrow, and begged him not to betray him, observing, that if he (Mr. Chandonet) divulged what he had told him, He (the Prisoner) must inevitably be hanged.

Gentlemen, Mr. Chandonet is an American Subject; and as the Prisoner solicited him to join in the projected Revolution, you have in his Testimony, Evidence also upon the sixth overt Act. But to support it still further, and to prove the seventh overt Act, I shall examine Thomas Butterfield. This Evidence is an Accomplice and a Subject of the United States. He first saw the Prisoner at Swanton, in the State of Vermont, in November last, the Prisoner told him, as he had told to all the other Witnesses, that he had been in Canada to feel the Pulse of the Inhabitants, to learn if they were willing to throw off the British Government. That he was employed for this Purpose by Mr. Adet the French Minister, and was then returning to him at Philadelphia, to let him know the Result of the Intelligence he had acquired in this Province. That he meant to return to Canada in the Spring, to prosecute the business in which he was engaged, and solicited him to join in the Enterprize, which he (Butterfield) engaged to do; this is direct Proof of the sixth and seventh overt Acts. It seems that the Prisoner, at this Time, entertained an Idea of taking the Garrison of Quebec by Surprise, for he mentioned it to Butterfield.—About the Middle of April last, true to his Intention of returning to Canada in the Spring, he went again to Butterfield's House, seemed to be apprehensive that he was discovered and declined coming into the Province till he had seen one Charles Fichette a Canadian. Butterfield came to Saint Johns at the Prisoner's Request, for Fichette, and carried him to Swanton, where the Prisoner conversed with him, and then determined not only to come into the Province but to proceed to Quebec. Before he left Swanton he told Butterfield that his (Butterfield's) Pay should commence from November last, when he first engaged, and at parting informed him, that his Intention was to proceed to Quebec, to see whether and in what Manner the Garrison might be taken by Surprise.

Gentlemen, The next Witness to be produced on the Part of the Crown is Charles Fichette, another Accomplice, and a British Subject. His Evidence will go generally, to support the overt Acts which charge the Prisoner with the Design of subverting his Majesty's Government and engaging his Subjects to rise in Rebellion; but more pointedly to the twelfth, thirteenth and fourteenth overt Acts. When he first saw the Prisoner, which was in July, 1796.

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The Prisoner endeavoured to prevail on him, to procure a Certificate, signed by six or more Canadians, of this Import, that they were dissatisfied with the British Government and wished to be under the French Republic, which he declined. An Oath of Secrecy was previously required from him by the Prisoner, which he took. Frichette went to Swanton in April last, in consequence of the Prisoner's Message by Butterfield. He saw the Prisoner, who expressed his Fears about entering the Province, but, being informed that he was not detected, he determined to come in; He did so, in Company with Frichette, and proceeded to Quebec by the South Shore Road; but, being apprehensive of a Discovery, He assumed the Name of JACOB FELT. At Saint Nicholas, the Prisoner asked him if He thought the Canadians ripe for a Revolution, and after further Conversation added, that He was a General in the Service of the French Republic, and came to deliver the Canadians from the British Government; that He had formed a Design of taking the Garrison of Quebec by Surprise and was then on his Way for that Purpose; that five hundred Men armed with Pikes of Wood, hardened in the Fire and headed with Iron, by pursuing his Idea, might effect it. On the tenth of May they crossed from Saint Nicholas to Wolfe's Cove, where the Prisoner concealed himself in the Woods, and sent Frichette into Town to bring Mr. Black, the Member of the Provincial Parliament; to him, which He did. The Prisoner had a long Conversation with Mr. Black upon the Means of exciting a Revolution and of taking Quebec by Surprise. At the Desire of the Prisoner and of Mr. Black He conducted the Prisoner to Mr. Black's house in Quebec, the same Evening.

Gentlemen,

I must here recall your Attention to the Declaration of the Prisoner, that he should revisit Canada in the Spring, for the Purpose of carrying his Design into Execution. To this second Visit and its general and special Intention, both Butterfield and Frichette, are Witnesses. Their Evidence will be indisputably confirmed by that of Mr. Black. He will inform you that he went to Wolfe's Cove in consequence of the Message which he received by Frichette, where he found the Prisoner; that he had a long Conversation with him in the Course of which the Prisoner entered fully into his Design: He meant, he said, to excite the Canadians to take up Arms against the Government, to engage at first a few Men of Influence, who should provide others, to be joined on a certain Day to be appointed; by many already engaged in the United States of

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America,

America to the Number of Ten Thousand, who would enter the Province under various Pretences. He proposed his Idea of taking the Garrison of Quebec by Surprise, which he thought practicable; he meant, he repeated, to use Pikes of eight Feet in Length, made of wood, hardened in the Fire and headed with Iron, and added that he did not wish to take a Life, but that all who resisted must fall. He was, he said, employed by Mr. Adet, who was about to leave Philadelphia for France on the seventh of April, when he left it, in order to procure the French Troops who were to cooperate in the Conquest of the Province. When Mr. Black first saw the Prisoner, He understood that his Name was Felt; but afterwards, in Conversation from himself and by a Letter which the Prisoner gave him from a Mr. Hunsden, he found that his name was David M'Lane.

Gentlemen, A much longer Conversation, than that which I have related, passed between Mr. Black and the Prisoner, which You will receive from him, I shall only remark that, towards the Conclusion, Mr. Black pressed him to come to his House that Evening, to which the Prisoner reluctantly agreed, expressing his Fears of Detection, He promised however to come after dark. Mr. Black returned to Town and made a Deposition of all that had passed, before a Magistrate, in consequence of which the Prisoner was apprehended at Mr. Black's House the same Evening.

Gentlemen, I shall call Mr. Ryland to a single point; to substantiate the Fact that the Prisoner, to conceal the Name of M'Lane, (too dangerous to be avowed) persevered in the assumed Appellation of Jacob Felt, even after he was apprehended. His Evidence will establish the twelfth overt Act beyond a Doubt.

Gentlemen. I have endeavoured to lay before you an accurate Outline of the Testimony which will be given by the several Witnesses, whom we shall produce. I have not, I trust, said anything which relates to Facts that will not be proved; but if I have been so unfortunate in any Instance, I must request you not to pay any Attention to it, what is not proved by legal Evidence you must totally reject.

Gentlemen, The Inference to be drawn from the several overt Acts, charged in the Indictment, must be drawn by you upon the Evidence which we offer. You are to decide whether the Prisoner is guilty or innocent; whether the overt Acts are supported by Proof and whether they are sufficient Evidences of a treasonable Intent ——— On this Head you will permit me.

me to remark, that no particular Description of overt Acts, is required to support an Indictment for Treason. All Measures whatever which manifest the treasonable Intention are overt Acts; even Words, Gentlemen, may be Proofs of Treason, especially when coupled with Acts. Loose Words, not relative to any Act or Design, I admit, are not so; but Words of Advice or Persuasion and Consultations for traiterous Purposes certainly are. This is a Rule which our best criminal Writers have adopted, and among them the humane Sir Michael Foster: they are uttered, says he, in Contemplation of some traiterous Purpose actually on foot or intended, and in Prosecution of it. Crohagan's Case is strongly to this Point; he was at Lisbon and declared he would kill the King of England if he could get at him, he came shortly after into England. Here were Words spoken in Contemplation of a treasonable Design, and coupled with Acts. The Indictment set forth his Declaration at Lisbon, and that he came to England on Purpose to put it in Execution. The Jury thought so, and Crohagan was convicted. So, in the present Case, all the Conversations of the Prisoner are Words of Persuasion and Advice, spoken in Contemplation of a treasonable Design of subverting the King's Government in Prosecution of it, and coupled with Acts; particularly with repeated Visits to the Province.

Gentlemen,

I shall not trouble You further on this Point of Evidence, but I must be permitted to advert to the excellent and learned Charge given to the Grand Inquest, at the opening of this Special Commission, which clearly recognised the Principle for which I contend, "that Words relative to a traiterous Design, actually on foot, and coupled with Acts, are Proofs of Treason."—In the same Charge it was stated, from the Principles of several adjudged Cases, that, if any Person, in the Employ of the King's Enemies, should declare an Intention of coming into the Province with a Design of promoting an Insurrection or to surprise one of the King's Fortresses, or to deliver any Part of the Province into the Hands of the Enemy, and should afterwards actually come in with such Intention, his Conduct would be an overt Act of Adherence, and amount to the Crime of High Treason.—This Declaration, is too strongly applicable to the Case before You, to allow a Comment on my Part.

Gentlemen, It is not my Province to state to you the Law upon the Prisoner's Case; that you will receive in the Progress of the Trial from much higher and most certain Authority. I have been necessarily

necessarily led into some Observations upon the Law relative to overt Acts, and to what I have already said, with the Permission of the Court, I will add, that, as the Statute of Treason, contemplates the King's civil, as well, as natural Death, all Conspiracies, all Measures to depose him, and every Act tending to subject his Dominions to a foreign Power, are overt Acts of compassing his Death. This is a broad Base for the Support of the first Count in the present Indictment. The Foundation of the second Count is equally extensive; for, every Attempt whatever to aid or assist the King's Enemies in the Prosecution of a War against him, whether successful or otherwise, is an overt Act of Adherence, these are Principles which, I must humbly hope, the Court will sanction and confirm.

Gentlemen, I trust we shall lay before you clear and full Proof of all the overt Acts charged in the Indictment, yet permit me to remark to you what has been often ruled that if one of them only is established by two Witnesses, or two of them by one Witness to each, whose Testimony you believe, the Evidence will be sufficient. The Prisoner will not then be entitled to the Presumption of Innocence. The Crime of High Treason will stand proved against him, and your Verdict, on the Oath you have taken, according to the Duty you owe to GOD, TO YOUR SOVEREIGN, YOUR COUNTRY AND YOURSELVES must be, that He is GUILTY in Manner and Form as He stands indicted.

EVIDENCE FOR THE CROWN;

MR. WILLIAM BARNARD (*sworn*).

Attorney General. Do you know the Prisoner?

Witness. I do.

Att. Gen. How long have you known him?

Witness. Since July 1796.

Att. Gen. Where did you first see him?

Witness. In the State of Vermont, but near the Province Line.

Att. Gen. Had you any conversation with him?

Witness. I had a good Deal.

Att. Gen. Pray give an Account of it?

MR. PYKE. If your Honors will permit us, We object to this Evidence. The overt Acts are all laid to have been committed in the Parish of Quebec, and they offer Evidence of Conversation which passed in Vermont.

Atb.

Att. Gen. This Objection was taken in Laver's Case, and it was there said in Answer to it—"We are entitled to give in Evidence overt Acts of the same Species of Treason wherever committed, provided we also prove one in the County laid in the Indictment, which we must do, otherwise what we now prove will pass for nothing." I offer this as an Answer to the Objection now taken, because it was held to be sufficient in the Case I now cite.

CHIEF JUSTICE. It certainly is a sufficient Answer. Whatever overt Acts you prove, committed out of the County of Quebec cannot avail you, if you do not prove an Overt Act within that County. Go on.

Att. Gen. Give an Account of what passed between you and the Prisoner in July last, at the Province Line.

Witness. On my Arrival at the House where the Prisoner was, near the Province Line, it was nearly dark, he told me he wished to have some Conversation with me. I stepped aside with him, as he desired not to speak in the Presence of other Persons: we walked down to the Shore of the Lake. The Prisoner then addressed himself to me, saying, he had something of great Importance to communicate, in the doing of which he should put his Life into my Hands: I desired him not to do it. He told me that I might perhaps think it singular that a Stranger should address himself to me in that way; but that was not so much the Case as I might imagine; for, although he was a Stranger to me, yet, I was not so to him. He then mentioned some Circumstances that happened to me before I came into this Province to reside, by which I knew that he had taken some Pains to find me out.

Att. Gen. Proceed.

Witness. He told me that I had been recommended to him as a Person to whom he might entrust a Secret: he desired that I would not divulge it, which I promised, if it should be nothing against me. He then told me that his Business there, was to bring about a Revolution in Canada, and that the Canadians would have every Thing done for them for that purpose.

Att. Gen. Did any thing further pass between you?

Witness. Yes, He went on and said, that he wanted some Person to take the Lead in the Business, to carry it into Execution; and if I would undertake it, my Fortune should be made.

Att. Gen. At what time was this?

Witness. It was in the Evening, on or about the 29th July, 1796.

Att. Gen. Go on if you please.

Witness. I then asked him who had recommended him to me, which he refused to tell. I told him it could be no Friend of mine : for no Friend would do it ; that it was a Plot of some Enemy of mine to ruin me ; that he was mistaken in his Man, and I turned away from him. He then desired that I would not say any Thing about it.

Att. Gen. Did he say any thing about Montreal ?

Witness. He said he should be at Montreal in a few Days, and perhaps I might think better of it.

Att. Gen. Did you afterwards see him at Montreal ?

Witness. I did, I saw him in Montreal, about four or five Days afterwards : he accosted me in the Street, and asked me if I had thought any further on what he had said to me at the Lines : I told him I had not thought much about it. He said that, when I came to know who he was, I should think differently ; That if I would not take an active Part, yet if I would conceal the Matter I should be protected. Of these Conversations I immediately informed Mr. M'Cord, one of the Magistrates at Montreal.

Att. Gen. Did you see the Prisoner at any time afterwards ?

Witness. Yes Sir, I was at La Prairie, a Village about three Leagues above Montreal, on the opposite side of the River, about the seventh of November last, where I saw the Prisoner again. I had seen him a few days before at Montreal, but had no Conversation with him.

Att. Gen. Had you any further Conversation at La Prairie with the Prisoner ?

Witness. I had, He said I must then think differently of the Business from what I had done before ; I replied that it was true there had been some Disturbances that looked some thing like what he had talked about. He said those Disturbances were very much against their Cause ; that he had been at Montreal, where he learnt that Suspensions were entertained against him ; he said I must have occasioned them ; for, I was the only Person to whom he had spoken on the Subject.

Att. Gen. What answer did you make ?

Witness. I told him, that after I had seen him at the Lines, I had mentioned the Matter to Mr. M'Cord, but had not mentioned his Name ; He said he was very sorry for it, and that I must be more cautious in future.

Att. Gen. Did He tell you any thing further ?

Witness.

Witness. He told me that I might depend upon it, this was a conquered Country; that there would be an Army here in the Spring, and if he could depend upon me he would tell me some thing further . . . That he wished me to take an active Part in the Business. I told him I should not take an active Part, nor should I make any other Promises than I had done.

Atty. Gen. Did he say any thing about the Seminary of Montreal?

Witness. He said I could make Enquiries where the Seminary kept their Money; and that he likewise wished to be informed who the principal Merchants were and in what Part of their Houses they kept their Cash; that, if I would do so I should be protected; that he wished me to sound the People's Minds and learn who would be likely to oppose them, and that I should use my Influence to keep the Canadians quiet during the Winter, so that there might be no Disturbances.

Atty. Gen. Did he tell you when the proposed Attack would be made?

Witness. Not particularly, but he said, the Blow, would be struck at once in the Spring, at a Time when it would not be expected; that they (the Prisoner's Party) should wish to confine all those that would be against them; but did not wish to take any Person's Life.

Atty. Gen. What other Conversation passed between you?

Witness. None Sir, the Prisoner appeared to be a little dubious of me, which, I suppose, prevented him from explaining himself further.

Cross-examined.

Mr. Pyke. Did you receive any Promise or Reward from Government when you gave your Information.

Witness. None.

Chief Justice. That Question has been allowed; but, I think it was an improper one.

Mr. P. When you were at Laprairie, did you not offer to conduct the Prisoner out of the Province?

Witness. No.

Mr. P. Did you not follow the Prisoner from Montreal to Laprairie?

Witness. No; I was there first.

Mr. P. Did you not go there for the Purpose of meeting the Prisoner?

Witness. I had other Business; but that made a Part, in order to get further Information, by Desire of Mr. M'Cord.

Mr.

Mr. P. Do you know the Prisoner to be a Subject of the United States?

Witness. I do not know any further than that he said he was.

One of the Jury. I beg the Witness may be asked by what Name he first knew the Prisoner.

Witness. I did not know the Prisoner's Name first; I afterwards found it was M^r. Lane.

ELMER CUSHING, (Sworn.)

Attorney General. Are you a British or an American Subject?

Witness. I am a Subject of this Government.

Att. Gen. How long have you known the Prisoner?

Witness. I have known him about ten or eleven Years.

Att. Gen. Do you recollect to have seen the Prisoner last Autumn and where?

Witness. He came to my House, the American Coffee-house, a Tavern which I then kept at Montreal, on the fifth of November last, in the Morning, before Breakfast: I was absent when he came: on my Return home, which was about ten o'Clock, one of the Witnesses here present informed me, that he had taken his Breakfast and was gone out: he returned about three or four o'Clock.

Att. Gen. Was you struck with any thing about his Cloaths when he returned.

Witness. Yes Sir, I observed that his Cloaths were covered with small Burrs, and asked him where he had been to get so many upon him: He answered that he had been upon the Mountain of Montreal: I remarked to him that he had been a long time gone: He answer'd that he had been on every Part of the Mountain, and he thought it commanded the greatest Prospect he ever saw, and might be made a Place of great Command over Montreal, in Case of a War.

Att. Gen. I dont wish to interrupt you, go on if you please:

Witness. The Conversation then turned upon the then Situation of this Country, in the Course of which I observed to him, that the Canadians had made considerable Disturbances and seemed to be disaffected. Immediately upon that he told me he wished to have a little private Conversation with me; we retired into a back Room, where he informed me that he had a Secret which he wished to impart to me; that it was a Matter of the utmost Consequence, and that he could not communicate it, unless I would swear never to reveal it.

Att.

Att. Gen. What was your Answer ?

Witness. I told him that I considered my Word always sufficient to keep a Secret without an Oath : he said he could not reveal it upon my bare Word, and I replied that I did not wish to know it.

Att. Gen. What Reason did he assign for requiring an Oath of Secrecy ?

Witness. He said he could not communicate it without my swearing, because he was putting his Life into my Hands.

Att. Gen. Proceed.

Witness. I told him that my concealing the Secret might be detrimental to me, in which Case I could not conceal it : he replied he would endeavour to make it advantageous to me, as he should have it in his Power. I then told him that I would conceal it in case it should not prove detrimental to me in Person or Property ; that I would, at any rate, conceal his Name ; and I made accordingly a solemn Promise to that effect.

Att. Gen. What passed after your Promise of Secrecy ?

Witness. He informed me that there would be a severe Attack upon this Province, early in the Spring, which would at once overthrow the present existing Government : that he had been employed in forwarding the Plan ever since he had been in and about this Country, and was so employed still. That the Attack would be made by a Fleet from France, which would bring from ten to fifteen thousand Land forces.

Att. Gen. There was I believe at that Time a French Fleet upon the Coast ?

Witness. It was so reported.

Att. Gen. Did he speak of that French Fleet ?

Witness. He did, he observed that the Fleet then upon the Coast was part of the Fleet destined for the Purpose ; but that the Season was too late.

Att. Gen. Did the Prisoner shew you any Papers ?

Witness. He informed me that he was employed by the French Minister at Philadelphia, and that he had something with him that would convince me he was not acting without Authority. He went to his Saddle Bags, took out a Pair of Shoes, one of which had a Hole worn through the Outside Sole near the Toe, and pulled a Paper out from between the two Soles, which was signed "ADET". The Paper was written in the English Language, in an obscure Stile, purporting, that he (Adet) was interested in the Family Concerns of David M^r Lane.

Att. Gen. Had you any Conversation upon this Paper?

Witness. I asked him why the Paper was writt n in such an obscure Stile, to which he answered that it was a dangerous Piece of Buſineſs to go upon, that if he ſhould have the Miſfortune to be apprehended, and the Paper ſhould be found upon him, it could not be produced in Evidence againſt him.

Att. Gen. What further paſſed reſpecting this Paper?

Witness. He ſaid the Paper was drafted by himſelf, and that Mr. Adet would have ſigned any other, but he (the Priſoner) thought this the ſafeſt Way in which he could write it: there was no Occaſion for a regular Commiſſion, he ſaid, until Matters came to the Teſt.

Att. Gen. If I underſtand you right the Priſoner came to your Houſe, as a Traveller. Did he tell you where he came from?

Witness. He informed me that he was then immediately from the French Miniſter at Philadelphia, and ſhould immediately return thither, where he ſhould receive his Orders and then ſail for France, that he ſhould return to Montreal in the Spring, by the Way of New York, in order to take the Command in that Quarter.

Att. Gen. Had you any Diſcourſe about the intended Attack?

Witness. I asked him in what Manner the Attack was to be made: he answered that the Attack was to be made at Quebec and Montreal at one and the ſame Time; that the firſt Object would be to ſecure the Money and valuable Property, for defraying the Expences of the War, and then effectually to ſecure all the Priests and leading Characters in the Province; that thoſe who were favorable to the Cauſe would be protected in Perſon and Property; but as to thoſe who were adverſe to it, it would fare hard with them. He ſaid, he ſhould have a Number of Perſons under him at Quebec at the Time of the Attack whom he meant to get into the Province on Rafts or in any other Way that he could, that they would be there for the Purpoſe of exciting Diſcontent and Mutinies within the Garrifon, and for ſpiking the Cannon, if poſſible, at the time of the Attack.

Att. Gen. What did he ſay reſpecting the Canadians?

Witness. He ſaid he did not expect to need the Aſſiſtance of the Canadians before the firſt Blow was ſtruck.

Att. Gen. Who did you underſtand was to command againſt Montreal?

Witness.

Witness. The Prisoner told me that he himself was to command against Montreal.

Atty. Gen. Had you any Conversation respecting Arms and Ammunition?

Witness. We had—he told me that Arms and Ammunition were to be furnished from France through the United States, by the French Minister Adet, for the Attack at Montreal.

Atty. Gen. Did you understand, that any Persons were already engaged in the Business.

Witness. I did, several—the Prisoner told me, that he had many People near the Lines in the States, who had already engaged to furnish him with a Number of Men each, who were to come in and assist in the Attack against Montreal. He said that I might be assured this was a conquered Country; that the French were determined to have it either by Conquest or Treaty.

Atty. Gen. Did he appear solicitous to engage you to assist him in any Way?

Witness. Very much so, He first desired me to take an active Part in the Business, promising that if I would, I should have any Reward I might ask, or any Standing in the Service I might chuse to accept of. I told him that I could not make him any Promises of that Kind, for, I should have nothing to do with it. He then said that if I would give every Information I could, respecting the State of the Country, I should be protected in Person and Property. I still told him that I should not make him any Promises, nor have any Thing to do with it, either one Way or another. He then said to me, you can certainly do thus much, “you can endeavour to keep the Canadians quiet till the Spring;” “for these Disturbances on Account of the Road Act are very detrimental to the Cause.” “I have, says he, at this Time a Number engaged for that Purpose.”

Atty. Gen. What Disturbances?

Witness. There were Disturbances at that Time in Montreal, respecting the Execution of the Road Act. Several Persons were violently opposed to it—The Prisoner, I conceive, alluded to them.

Atty. Gen. Go on if you please.

Witness. He then told me that he had gone as far with me as he could go, until I should promise to join and take an active Part; but if I engaged to take an active Part, he had other Matters of great Importance to relate to me.

Atty.

Att. Gen. Did the Prisoner remind you of your Oath of Secrecy?

Witness. He did, and said that, if I ever revealed what he had communicated, it should fare hard with me, that my Life would be taken immediately.

Att. Gen. What did the Prisoner say to you as you left the Room where the Conversation, which you have related, took Place.

Witness. He observed that I might alter my Mind perhaps, and that he might, during the Winter, send some Person to converse with me; that if any one should come, and tell me he came to talk with me on Family Matters, that would be the Man, and I might then depend upon not being deceived.

Cross-examined.

Mr. Pyke. Did not you come to Quebec in November last, to give Information against the Prisoner?

Witness. I gave Information respecting a Plot against Government, but I did not mention the Prisoner's Name.

Mr. P. Did you not obtain a Promise of a Township of Land as a Reward?

Witness. I have a Promise of a Township, but not as a Reward for any Information which I ever gave against the Prisoner.

Mr. P. Is it not on Account of that Promise that you now come to give your Evidence,

Witness. No it is not, I have been served with a Subpoena, and I should have come if I had not obtained a Promise of a Township.

Mr. P. Is the Prisoner a British or an American Subject?

Witness. When I first knew him, about eleven Years ago, he resided at Providence in Rhode Island. He is generally reputed an American Subject.

FRANCIS CHANDONET, (Sworn.)

Att. Gen. Are you a British Subject.

Witness. No Sir, I am a Subject of the United States.

Att. Gen. Do you know the Prisoner at the Bar.

Witness. Yes I do.

Att. Gen. Inform the Court and Jury, how you first became acquainted with him.

Witness. I saw the Prisoner the first Time at Watson's Tavern last Summer, a little below the Isle aux Noix, and, some Time in the Beginning of the Winter I saw him again; he came across the Lake

Lake to a Place about three Quarters of a League above the Lines, within the United States; he met me on the Bank of the Lake and asked me if my Name was not Chandonet: I answered Yes. He asked me to take a little Walk with him; for, that he had some Thing to communicate to me in private, which I consented to.

Att. Gen. What did he tell you in the Course of your Walk?

Witness. He told me that he was there upon Business of the utmost Importance, and that I had been recommended to him as a proper Person to assist him, if I would take Part in it; but before he could relate the Matter to me, I must engage not to divulge it.

Att. Gen. Did you make him any Promise of Secrecy?

Witness. No Sir, I told him I could not make such a Promise till I knew what the Matter was, he said the Business was of a political Nature, and that he could not relate it until I had promised; which I again refused to do.

Att. Gen. What followed?

Witness. After a short Pause he said, he supposed I would not be accessary in taking away a Man's Life, and that he would therefore go on with the Conversation: he then told me that he was employed by the French to go into Canada to sound the Minds of the People, and to see how they were affected to the present Government, which Business he had already begun, and had found a large Body of the Canadians could be raised to make an Insurrection in the Country; that he had learnt I was going to live on the River St. Lawrence, at a Village called St. Regis, within the State of New-York and a few Leagues above Montreal, which, he thought, would be a very suitable Place to have such a Person as me, if I would assist him to carry on a Plan.

Att. Gen. Did he tell you what Plan?

Witness. He did, he told me that this Plan was to secret a Quantity of Arms and Ammunition on Rafts of Wood in the Spring of the Year, to be brought into the Province, both by Lake Champlain and the River St. Lawrence; that he thought a Quantity might likewise be concealed in the Rafts of Firewood that are made in the Chateauguay River; and that these would be the safest, in as much as it would be supposed they were coming from Upper-Canada.

Att. Gen. Do you recollect any Conversation respecting the Prisoner's Brother.

Witness. I do, The Prisoner told me, that he had a Brother who was coming to the Lines with a large Quantity of Dry Goods: that these Dry Goods were for the Purpose of collecting a Store of Provisions to be ready when the Insurrection in Canada should take

take Place, and that it would furnish a good Excuse for him to be backwards and forwards, as he could visit his Brother's Store without being suspected.

Att. Gen. Did he ask you to join him?

Witness. He pushed very hard upon me take Part with him.

Att. Gen. Did you agree to take a Part.

Witness. I refused, and declined having any thing to do with him. He told me he was sorry I would not.

Att. Gen. Did he desire you to be secret.

Witness. Yes Sir, he did, and added that If I divulged what he had told me he must inevitably be hanged. He left me immediately after.

Cross Examined.

Mr. Francklin. How long have you known the Prisoner.

Witness. About Eleven months. I did not at first know his Name.

Mr. F. Do you know him to be a Subject of the United States.

Witness. I do not know whether he is or is not.

Mr. F. Are you not a Canadian by Birth?

Witness. Yes.

Mr. F. Why then do you call yourself an American Subject?

Witness. I left the Province with the Americans in the year 1776, having the Promise of a Commission in the Army; I was afterwards naturalised in the United States.

Mr. F. Did you not come into the Province last Winter, and was you not sent out by a Proclamation from the Governor, on Suspicion of being a Person disaffected to Government.

Witness. I was sent out of the Province as being an Alien.

Mr. F. When did you first give Information against the Prisoner?

Witness. Last Winter.

Mr. F. Did not the Expectation of being permitted to return into the Province, in order to go to your Farm in Upper-Canada, induce you to give Information against him?

Witness. No, being conscious of my Innocence, I wrote a Letter from the Lines to Mr. Richardson, the Magistrate at Montreal, telling him that it was my Intention to go to Upper Canada, and that I was ready to take my Trial upon any Charge that might be brought against me. Some Time after I came again into the Province, and was then Subpoenaed to give Evidence against the Prisoner.

THOMAS

THOMAS BUTTERFIELD, (Sworn.)

Mr. Pyke. The Attorney General, in his Opening, has stated that this Witness is an Accomplice. We must object to his Examination.

Attorney General. He certainly is an Accomplice, but he is still a good Witness. I must again refer to Layer's Trial. In that Case, Lynch and Plunkett, both Accomplices, were examined as Witnesses for the Crown. Every day's Experience shews that Accomplices may be heard. The Objection can only go to the Credit of the present Witness, not to his Competency.

Chief Justice. There can be no doubt on this Point. Where previous Testimony has been given, the Evidence of an Accomplice can certainly be received.

Atty. Gen. You are I believe a Subject of the United States.

Witness. I am a Subject of the United States.

Atty. Gen. Do you recollect having seen the Prisoner last Fall, and where?

Witness. The Prisoner came to Swanton in Vermont about the Middle of November last, and put up at a Tavern near my House: he desired me to take a Walk with him, which I did, he told me he had a Matter which he wished to communicate, if I would not reveal it: it would be of Advantage to me.

Atty. Gen. What did he afterwards tell you?

Witness. He informed me that he had been in Canada, in order to sound the Minds of the Canadians, and to learn whether they were willing to rise and take the Government out of the Hands of the British; that he had been in Canada before in the course of last Summer, and had been in Philadelphia on the same Business.

Atty. Gen. Did he tell you by whom he was employed?

Witness. He did, he told me, he was employed by the French Minister or Agent "Ader".

Atty. Gen. Did he tell you where he had been?

Witness. Yes, he said, He had been in Montreal and found that the People were disposed to lend a Hand in a Revolution, and were willing to seize the Government of the Country, if they had any Body to lead them; and that he was then returning to Mr. Ader with this Information.

Atty. Gen. Relate any other Particulars of the Conversation which you remember.

Witness. I asked him if he had found any Men that could be depended

depended on, who were willing to join him: he answered Yes, one Black or Blake, and that there was a Number of others whom he had seen and conversed with; he particularly mentioned one Barnard, (whom I did not know) who, he supposed, would be willing to join him: he told me that he was then going to Philadelphia to Mr. Adet, to make his Returns of what he had done in the Province. I asked him if he had any Letters to Mr. Adet; he said he had one which I understood to be from Mr. Black or Blake, but I did not see it.

Att. Gen. Was you ever present at any Examination of Papers.

Witness. No Sir, I was never present at any Examination of Papers.

Att. Gen. Had you any further Conversation at this Time?

Witness. We had some Conversation with regard to the taking of Quebec: the Prisoner seemed to think, if that could be done, the Country might soon be overcome, and he proposed bringing in a Number of Men from the States, on Rafts.

Att. Gen. Did the Prisoner say he meant to return to Canada?

Witness. He told me that he expected to be back again some Time in April or the beginning of May following.

Att. Gen. The Prisoner I believe solicited you to join him.

Witness. Yes he did.

Att. Gen. Did you undertake to assist him?

Witness. I did certainly engage to assist him in the Undertaking.

Att. Gen. When did you next see the Prisoner?

Witness. About the twentieth of April last—He returned to Swanton and came to the Tavern close to my House.

Att. Gen. Had you any Discourse at this Time.

Witness. Yes Sir.

Att. Gen. Relate it.

Witness. He gave me a Wink to step aside and asked if I had been in Canada during the Winter: I answered I had not: he asked me what News from there; whether I had heard of any Discoveries respecting him: I told him I had not: he said he had heard on the Road that he had been discovered: I told him I knew nothing about it.

Att. Gen. Did he converse with any other Person.

Witness. Yes with Mr. Holgate for about half an Hour, out
Doors,

Doors; and the next Morning He asked me to assist him with a Boat and two Hands to go to Isle La Motte, and I procured the Hands for him.

Att. Gen. Was you sent in Search of any Person by the Prisoner?

Witness. About the 26th, of April the Prisoner desired me to go to St. John's in Canada, to bring one Frichette to him. I asked him if Frichette would come: he answered yes, he knows me, I accordingly went to St. John's and did my Errand to Frichette and brought him to Swanton. The Prisoner and Frichette went out together and had a Conversation; after which he told me he had determined to go into Canada with Frichette.

Att. Gen. Did the Prisoner give you any Money for your Journey to St. John's?

Witness. Yes, a few Dollars.

Att. Gen. What did he tell you concerning that Money?

Witness. He told me that the Money he had given me was not for Pay, but for my Expences; that my Pay would begin from the Time he first engaged with me, by which I understood he meant November last.

Att. Gen. When he left you did he say to what Place he meant to go?

Witness. He told me that he and Frichette were going to Quebec to view the Place?

Att. Gen. For what Purpose?

Witness. He said he meant to lay some Plan to take the Garrison; but what Plan he could not say till he had seen it.

Att. Gen. Did you make any Enquiry respecting the Prisoner's Papers?

Witness. Yes Sir, I asked him where, they were, he said he had left them with his Brother, who was then at Mr. Scovill's; he told me also that Scovill had married a Sister of his, and had moved to Swanton in February last, in order to afford a Home for him and his Friends.

Cross Examined.

Mr. Francklin. How long have you known the Prisoner?

Witness. The first Time I saw him was a twelve Months ago last April.

Mr. F. Is the Prisoner a Subject of the United States?

Witness. I do not know, but I understood him to be so: he told me he was born in Boston.

Mr. F. Was not you apprehended in May last on Suspicion of Treason?

Witness. I was taken up at St. Johns in May last, for aiding and assisting this Mr. M'Lane, and I am now in Custody.

Chief Justice. You said that your Pay was to commence from the Time you engaged, had you any specific Sum promised you?

Witness. No Sir, I had no specific Sum promised me.

CHARLES FRICHETTE (sworn).

The Witness observed that he was unable to express himself in the English Language whereupon he was allowed to give his Evidence in French, and Mr. JAMES TANSWELL was sworn as Interpreter.

Atty. Gen. When did you first become acquainted with the Prisoner?

Witness. I first saw the Prisoner in the Month of June, 1796.

Atty. Gen. By what Name did you then know him?

Witness. He then went by the Name of David M'Lane.

Atty. Gen. Where did you first see him?

Witness. He came to my House at Saint. Johns and asked me if I knew one Frichette to which I answered "I am the Person". He asked me if I had Horses to sell; I answered "Yes". We went into the Field and he asked me if I could keep a Secret and was an honest Man; I told him not to trust me too much. He said he had a Secret to tell me; but that he could not communicate it without my taking an Oath of Secrecy.

Atty. Gen. Did you take the Oath?

Witness. Yes, I took the Oath.

Atty. Gen. What Conversation passed afterwards?

Witness. He asked me if I would go to Philadelphia or to France, I asked him for what Purpose; he answered "to see the French Minister". I said no, it was too far; he said if I would go with him, he would give me a good Reward; I replied it was impossible. He then asked me if I could procure a Certificate from five or six Canadians to shew that there were more People who wished for a Change of Government than were contented with the present Government; I said it was impossible; he replied, the Certificate could do no harm. He bid me not to be afraid, that he was an Officer in the French Army, he asked repeatedly for the Certificate, but I did not procure it.

Atty. Gen. When did you next see the Prisoner?

Witness.

Witness. About the latter End of April last Butterfield came for me and conducted me to him. He was then near the Falls of Mississ-koui river; he gave me a good Reception; we took a Walk together.

Atty. Gen. What passed between you at this Time?

Witness. He asked me whether there was any News in Canada; I told him "No"; he asked me if I had revealed what had passed between us last Autumn; I told him I had not. He then asked me if I thought he might safely go thither; I said "Yes"; He proposed that we should go together I asked to what Part; he answered he did not exactly know, but perhaps he might go to Quebec. He asked me if I would conduct him, to which I agreed.

Atty. Gen. You came in, did you not?

Witness. Yes, we passed behind the Fort of Saint Johns before Day-light and proceeded on the South Shore Road to Saint Nicholas. On the Journey the Prisoner observed, the Country wanted English Farmers for its Improvement.

Atty. Gen. What passed at St. Nicholas?

Witness. At Saint Nicholas he asked me why the Prisoners, then in Gaol at Quebec, were confined, and if I thought the Canadians were disposed to revolt; I said no, they were not very warlike nor desirous of a War but he did not tell me that he came to make a Revolt, he laughed when he spoke about a Revolt. He asked me if I knew one Black, a Member of the Provincial Parliament; I said "No". He afterwards told me that he was come to take Quebec. I said "If I thought so, I would go back". He said he did not intend to hurt any Body; that if he had five hundred Men with Pikes of Wood six or seven Feet long, hardened in the Fire, he could take the Town. He desired me to ask my Brother respecting the People at Quebec, why they were in Gaol. I did so, He told me; for making Disturbances about the Road Act.

Atty. Gen. Proceed with your Story.

Witness. We left St. Nicholas, and crossed the River St. Lawrence above Wolfe's Cove where we landed. The Prisoner sent me to Town to bring Mr. Black to him, which I accordingly did. When Mr. Black arrived, the Prisoner desired him to excuse the Liberty he had taken in sending for him, and said that he was afraid of coming into Town himself, for fear of being suspected.

Atty. Gen. At what Time was this?

Witness. This was about two o'Clock in the Afternoon.

Atty. Gen. Now go on.

Witness. Mr. Black then told the Prisoner, that I had informed him of the Intention of his Journey; Mr. Black said he did not.

not think it could succeed, that he had attempted the same Business without Success, and he therefore advised the Prisoner to go off without making the Attempt; He said the Canadians were not sufficiently disposed to rise; and were little to be depended on, that one went one way and another, another way, and that they were not worth doing any thing for. The Prisoner said that he should go away.

Atty. Gen. Continue Your Narrative.

Witness. He informed Mr. Black he had a Letter for him, and said he had another Letter for an other Person. Mr. Black opened and read both Letters and then advised the Prisoner to tear them to Pieces; Mr. Black tore one and the Prisoner the other. I advised them to bury the Letters, which was done. The Prisoner then told Black that he would go away as soon as the Tide served, and begged him to keep the Secret; for, that, if he revealed it, he would do him a great Injury. He said that Mr. Marston, one of the Constables at Montreal had been offered five hundred Dollars to take him the Year before, Mr. Black told him he was an honest Man and that he need not be afraid.

Atty. Gen. Was any thing said about taking Quebec.

Witness. Yes there was.

Atty. Gen. What was it?

Witness. Mr. Black asked the Prisoner what Plan he had for taking the Town; the Prisoner answered that it was very easy to take it; that if he had five hundred Men, he would take it very easily; that each Man might be armed with a Pike about six or seven feet long, pointed with Iron and hardened in the fire; and if the Town-gates were open, one Company might come in at one Gate and another at another Gate, and strike at the same Time. The Troops, he said, would be so surprised that they would not know which way to turn; he thought there would not be a Person killed on either side. I heard no more.

Atty. Gen. What was the Reason?

Witness. I fell asleep.

Atty. Gen. Did you hear any thing afterwards?

Witness. When I awoke I heard the Prisoner say to Mr. Black that some thing might be given to the Troops to set them asleep; Mr. Black said that would do very well, that the greater part of the Troops were Volunteers and desired nothing better than to lay down their Arms: that the most of them had enlisted, merely to get Bread.

Atty. Gen. Was any thing said about coming to Quebec.

Witness.

Witness. Mr. Black desired the Prisoner not to be ashamed nor afraid, but to come to his House, dress himself like a Gentleman and take a Walk about the Town.

Atty. Gen. Did the Prisoner accept this Invitation?

Witness. He, expressed a dislike to come into Town; but Mr. Black told him not to be afraid, and He at Length consented to come. Mr. Black did not approve of his coming in Company with him, because, he said, he himself was watched and their being together might create Suspicion and He desired me to bring him to his House in the Evening, which I accordingly did.

Atty. Gen. You have said that you first knew the Prisoner by the Name of M^r. Lane. By what name did you call him on the Journey from Saint Johns to Quebec?

Witness. The Prisoner desired me to call him FELT, and I called him by that name from Saint Johns till we went to Mr. Black's

JOHN BLACK, Esquire, (Sworn.)

Atty. Gen. Pray Sir, do you recollect having seen the last Witness (Frichette) on or about the Tenth of May last, and where?

Witness. Charles Frichette called on me on the tenth of May last, about twelve or one o'Clock, at my own House in Quebec.

Atty. Gen. Did he offer any thing for Sale.

Witness. At first, he asked me if I would buy some Oak Timber of him, and we accordingly bargained for Oak Timber; but afterwards he desired to speak with me in private: I went with him into another room, where he took me by the Hand and said "you will be surpris'd when I tell you that I have no Oak Timber to sell. " I am come upon Business of a quite different Nature"; then squeezing me by the Hand he said, are you the Mr. Black that was in Gaol in the year 1794: I told him I was: "you have been much injured, said he, but your Injuries are now almost at an End, the French and Americans have taken up your Cause, and "you will soon triumph over all your Enemies". I wished to know why he came to me; I told him I had already been caught by insidious Men: then squeezing both my Hands he asked "are "you really to be depended upon"? I told him I was to be depended on: "then," says he, "there is a French General within a Quarter of a League from this Place who wishes to have a Conversation with you respecting the taking of the Garrison of Quebec. I asked by what Means? Has he an Army? He answered "No, "he has no Army, he wishes to concert Measures with you, and "you must come immediately with me to see him".

Atty.

Att. Gen. Did you comply with his Request?

Witness. I thought it was prudent to comply with it, and I proposed to go in a Calash; but Frichette did not approve of it; I therefore set off in Company with him on foot.

Att. Gen. To what Place did he conduct you?

Witness. We crossed the Plains of Abraham, went down by Wolfe's Cove, and up Mr. Mabane's Hill. When we came to the Side of the Wood, Frichette asked me to go into the Wood with him, which I at first declined, not knowing how many People might be there. Frichette went in, he came out again shortly after and I saw him beckon to me; I then went about two hundred Yards into the Wood, where I found the Prisoner in a very long Beard.

Att. Gen. Had you any Conversation with him?

Witness. He shook Hands with me, and expressed himself glad to see me, begged Pardon for sending for me, but added that he wished to see me on a Matter of great Importance. I think it proper for me to mention here, that I never saw the Prisoner, till I then saw him in the Wood; nor had I ever heard of or knew there was such a Man in Existence. I think it also necessary to add, that I was uncertain in regard to my Situation when thus in the Wood, and that I therefore agreed to every Measure the Prisoner proposed.

Att. Gen. I wish you to relate to the Court and Jury the particulars of the Conversation which passed between you.

Witness. The Prisoner said, his Man had told him that he had explained to me a Part of his Plan, "My Plan (said the Prisoner) is that of Humanity. I am sorry to see a great People labouring under the Tyranny of England: I propose to push the British Government from the Continent of America". I asked him by what Means: he answer'd eight or ten Men of Influence, such as I might be one, might raise, under plausible Pretences, as many People as possible; who, at a certain appointed Time would be joined by a Number of Men, who were following him in from the States under various pretexts of seeking Labour, &c. that he would arm them with Pikes of eight Feet in length headed with Iron and hardened in the Fire, which he considered to be eighteen Inches longer than the British musket and Bayonet; that Laudanum, he thought, might be given to the Troops with Effect; that the Attack must be sudden, they would rush in, but not take a Life if possible to avoid it: he hoped none would be taken: but at the same Time, said he, for the sake of Posterity all who resist must fall.

Att. Gen. What further?

Witness. He observed to me that we must take Care, not to injure

injure the Works; for, that would render us vulnerable after we were Masters of the Garrison. He said, he left Mr. Adet on the seventh of April, who was going to France on the Tenth; that both he and the Spanish Minister were concerned in the Measure; he added these Words "Adet is the Man of Business, the Spaniard is a Fop."

Att. Gen. Did he observe any thing further to you?

Witness. He said that Measures were so concerted with Mr. Adet that, if we could but possess ourselves of the Garrison by Surprise, it could never be recovered from us; for, said he, besides the Measures taken by the French and Spanish Ministers, I have fifteen thousand Men at the Lines ready at a Nod, with Part of which I mean to garrison this Place, and with the Remainder perhaps from an Expedition against Halifax. You may think me young, said he, for such an Enterprize; but this is the System France pursues at present; she will not employ an old General.

Att. Gen. By what Name did you then know the Prisoner?

Witness. Previous to my seeing the Prisoner, and until the latter Part of our Conversation, I understood his Name to be Felt; but he then gave me two Letters, the one directed to John Blackwood, Esq. and the other directed to myself, recommending the Prisoner as a Gentleman highly worthy of Notice, by the Name of Colonel David M'Lane.

Att. Gen. What did you do with these Letters after he delivered them to you?

Witness. After reading the Letters I tore them and buried them: but after the Prisoner was arrested I took them up again, and have them now in my Pocket.*

Att. Gen. The Prisoner told you Mr. Adet was gone to Europe, did he say for what Purpose?

Witness. He told me that Mr. Adet was gone to Europe, for the Purpose of bringing a Force to cooperate with the fifteen thousand Men that were to be brought in from the States.

Att. Gen. Did he make any Enquiries respecting Quebec?

Witness. He enquired much concerning the Property, public and private, that there was in Quebec. I told him I thought there might be from three to five hundred thousand Pounds; I knew not how much more. He said the Property was intended to be given to those who should take the City; he also told me that he had been in the Province in October last; that the Government boasted of having quelled the Tumults at Montreal; but that it was in Reality he that had done it.

Att. Gen.

* Here the Witness delivered the two Letters to the Clerk.

Atty. Gen. Did you recommend to him to come into the Garrison?

Witness. Yes, I advised him to come to Town after dark; he expressed his Fears of being discovered, and said that Government had offered five hundred Dollars for his Person. He however at length consented, and gave me his Pocket-book, (in which his Name was written) to prevent Detection, in Case he was taken.*

Atty. Gen. Did the Prisoner come into Town with you?

Witness. No, I left him to be conducted by Frichette to my House when Night came on. As soon as I came into Town I gave Information to a Magistrate, (Mr. Young) and the Prisoner was apprehended the same Evening, about eleven o'Clock at my House.

Cross Examined.

Mr. Pike. By whom were the Letters signed?

Witness. By Mr. Hunsden.

Mr. P. Is Hunsden a Friend to the British Government?

Witness. I cannot tell, but I believe so. I consider him to be a good Man and a Friend to good Order.

Mr. P. What were the Letters about?

Witness. They were about Business? Timber, Staves and Lumber in general.

Mr. P. Did not the Prisoner tell you that he came into the Province to purchase Horses?

Witness. No, he told me that the Reduction of the Fortress of Quebec was the Object of his Journey: that he had bought a Horse at Yamaska, but that this was for a Mask.

HERMAN WITSIUS RYLAND, Esquire,

Secretary to his Excellency the Governor General.

(Sworn)

Atty. Gen. I must trouble you, Sir, to relate the Circumstances relative to the Prisoner's Name, which took place when he was apprehended.

Witness. Between eleven and twelve o'Clock at Night, on the Tenth of May, I received a Deposition made by the last Witness, containing in Substance the Evidence which he has just given, from which I learnt that M'Lane was in Quebec: I communicated it immediately to the Governor, and by his Order, went with a small Party of Soldiers to apprehend him. I found him in Bed at Mr. Black's House in the Suburbs; I awoke him and asked him what his name was.

*Here the Witness produced the Pocket book.

was; he said it was Felt: I told him I understood it was M'Lane; he again asserted that his Name was Felt, and that I was mistaken. It was too late to carry him before a Magistrate: he was conducted immediately to the Mainguard. I there enquired what Monies he had with him: a Bag was produced containing, One hundred and forty Dollars, the greater Part in Quarter Dollars: I wished to give him a Receipt for it: and asked him in what Name I should give the Receipt: he answered, JACOB FELT. I gave him a Receipt for Monies found on Jacob Felt, alias David M'Lane.

Atty. Gen. I have no further Questions.

Cross examined.

Mr. Pyke. What was his Conduct when apprehended?

Witness. Perfectly decent and collected, not like a Man conscious of any Crime.

Attorney General. We have several other Witnesses who are now present in Court; but as the Case is already fully established, we shall rest it upon the Testimony which the Jury have already heard. The Evidence on the Part of the Crown is closed.

Mr. Pyke. The Prisoner desires to be heard personally in his Defence, and hopes the Court will allow, both him and his Counsel, to Speak. He wishes to speak first.

CHIEF JUSTICE. The Court will most readily allow the Prisoner, in his present unfortunate Situation, every thing which he can reasonably ask. It is not usual for the Prisoner to speak before his Counsel; but we will hear both him and you in the order you may think proper to adopt.

THE PRISONER'S DEFENCE.

MAY it please Your Honors, I feel much satisfied that I am permitted to speak before You on this solemn Occasion. I am indeed very sensible that a black Cloud hangs over my Head; that every thing looks very dark against me; but I think and trust, if my Conduct be looked into, it will be dispelled into gentle Showers. I feel Gratitude that I have been indulged in every thing reasonable. I thank the Court for its Indulgence to me. Gentlemen of the Jury, the Day is at last arrived which we have looked for, on which you are to decide on my Fate. Your Faces are all strange to me; but if I can read in your Faces your Hearts, surely I have nothing to fear.———To you Mr. Sheriff and to you

K

Gaoler

Gaoler, in whose Custody I have been since the tenth Day of May last, I make my public Acknowledgements, and thank you for the kind Treatment I have received. To you——[*Here the Prisoner turned towards the Audience and seemed prepared to address them.*]

Chief Justice. Prisoner—The Court will be happy to hear every thing you can say in your Defence, but it must be addressed to them.

Prisoner. I beg Pardon if I have done wrong. I will continue my Defence.—I am confident I can explain what now appears against me, but in accounting to you for my Conduct in this Province, it is necessary that I should give you a little Narrative of my Life, previous to my coming here; for, it is in some Measure bound up with the Views I had in this Country, and I shall sometimes be obliged to go back a little from one thing to another; but I hope I shall not tire your Patience, nor do what is improper. I am not a Man used to address in this way, if I should go astray the Court will put me to rights.—It is true to say, my Life has been a Day of Sorrow. I was unfortunate in Trade, which is what brought me first to this Country: I had a Store at Providence, in Rhode Island, where I had lived in Credit for some Years: I had a Brother in Law named Jacob Felt: we failed in Trade: we had losses: we were unsuccessful. I found we must positively fail and: I communicated this to my Brother. He said, many People had been at the Store, who had been in Canada, who said much Money might be made there: this was in the Fall ninety-five. When I found my Presses came so hard against me that it was certain I could not stand against them, I advised my Brother to take Goods from the Store and go to Canada with them to see what could be done there, hoping, if they turned to Account, to be able to satisfy some of my Creditors. After he was gone I was involved worse and worse: I prepared myself to go somewhere, seeing that my Creditors would come upon me.

I had desired my Brother to meet me on the first of May, at one Greigg's, near the Lines. I went there and found my Brother had left some Goods there. I, soon after this, came into Canada to St. Johns. Before this I had been about Lake Champlain, loitering away the Time till I was to meet my Brother. I was two or three Days with Squire Butterfield, and talked with him about Canals and Roads and such like. I went from St. Johns to Montreal and put up at Mr. Cushing's, where I met with one Mr. Moore, who was come upon a Speculation of buying Lands or Cutting Canals: we had some Conversation together and he desired
me

me not to interfere with him in his Speculations. Finding there was nothing to be done in this way, I returned to Greigg's, where I saw Mr. Barnard: I asked him a Number of Questions of a Mercantile Nature about the Province, because I meant to come and settle in it, and endeavour to get a Living in it. I asked about the Situation of the Canadians, because, if there was likely to be Disturbances, it might not be prudent to think of settling here, and I must turn my Views to something else.

After I was in Canada the first time, I saw several Americans: they asked me if I had been about the Province, and if I had been upon the Mountain of Montreal, I said no: they advised me, if I returned, to visit it as well worthy of Curiosity. When I returned to Montreal to look after some Work; for, I would willingly have worked, though I was never much used to it: having nothing to do, I thought it would be a good Time to visit the Mountain; I did so, and when I came back, I told Mr. Cushing where I had been: he said you should not mention that: I asked why so; he said because you are much suspected here: I asked why I was suspected, I could give good Proof of who I was. I went to my Saddle Bags and took out from it my Pocket Book to get for that purpose the Paper which he has mentioned. In crossing the Lake my Pocket Book had fallen into the Water and got damaged on one Side: I put it into my Saddle Bags, where there was an old pair of Shoes worn out at the Toes, the Paper had slipped between the Soles.

I must now go back a little, in my Narrative to shew, you how I came by this Paper. My Wife was related to a Family of the Name of Belfshire at Newport in Rhode Island. There was a Brother and two Sisters, their Father was concerned in the Guinea Trade, and was killed by the Negroes on the Coast of Africa; the Brother followed the Sea; he died three or four Years ago and left some Property in France which his Sisters could never get by Reason of the Troubles. As I found it was not likely I could do any better, I thought to go to France, to try to get this Property, and bring out Goods for it, which would yield me a Commission: for this Purpose I went to the French Minister at Philadelphia to get a Certificate: he was not there, but I saw his Clerk, whose Name I do not well remember. he gave me a Paper certifying, that the French Minister interested himself in my Family Concerns. I did not go then to France but came to Canada. Here finding there had been some Disturbances and that I was suspected, I determined to go back to New York and from thence to France.

When

When I came to New York, I found that the French, as the English had done before, took all our Vessels they could lay hold of, not only those bound to an Enemy's Port; but also those bound to their own Ports. Now again I was once more disappointed and knew not which way to turn. I looked again towards Canada; for, I was fearful of my Creditors in the States, and hoped something yet would turn up. When I returned again to the Lake, I found that I could buy Timber on Credit and I meant to bring some here to change for Horses to take out of the Province, which I thought would turn to a double Advantage. I met Squire Butterfield, and asked him if he knew any Body that would take me into Canada; he answered yes, he knew one Frichette. I said I knew him and he went to fetch Frichette to me. I knew my Creditors followed me; and that it would be very easy for them to find me out, and therefore, as I did not wish to be taken; I resolved to go by another Name, for this reason I told Frichette that my Name was Jacob Felt and he accordingly called me always by that Name. I made an Agreement with Frichette to carry me down to Quebec or perhaps a little below; and to shew me the Places where I could purchase the best Horses, which he promised me to do. We set out in the Night with the Ferryman of South River, and he landed us between Watson's Point and the Fort at Saint Johns, a little before Day-break. We were landed about a Quarter of a Mile from the Fort. I did not know that it was necessary that I should give in my Name at any Place, and I shunned St. Johns, that my Creditors might not have a Clue to find me. I was so apprehensive of them, that I asked Mr. Black, when I came here, if there was any Body from the States who knew me. When we came to Mr. Frichette's we staid a Day in his House and then he and I set out for Quebec. The first Day we breakfasted with a Brother of Mr. Frichette a Priest at Bellisle. We then came to Sorel. I saw no Horses that I liked; till I came to Saint François, where I bought one. We continued our Journey after this, till we came to Saint Nicholas where three of Mr. Frichette's Brothers live. When we came there he wanted to stop a little Time. He said some Canadians had been put in Prison; I asked on what Account: he said on Account of the Road Bill. I asked if he did not think they would rise again and endeavour to rescue their Companions out of Prison; he said he believed not, they were not very warlike; but he did not know; and he talked to me about arming them with Pikes in Case any Thing should happen. I came over to Wolfe's Cove, and sent Frichette to bring Mr. Black; for, I was prevented
from

from coming into Quebec by Fear of my Creditors or of some Person's knowing me, who might give Information where I was. I remained in the Place where I was put on Shore, till Mr. Frichette came back and brought Mr. Black with him. I had some Conversation with Mr. Black; he said he should like to purchase some Timber, but didn't choose to buy before he had seen it. I had asked one Captain Hunsden in Vermont to give me Letters to Canada to some Body that could give me any Business to do; he gave me Letters to Mr. Blackwood and Mr. Black, stating that I had Timber to dispose of and mentioning me by my Name "David M' Lane". Mr. Black knew Mr. Hunsden, and when I gave him the Letter he asked me to come to his House at Quebec. I said I was afraid of my Creditors, and asked him if there were any Strangers in Quebec lately arrived from the States. He said no and pressed me very hard to come, but recommended me to keep the Name of Jacob Felt which I had taken; and as the Letters to Mr. Blackwood and himself, he said, mentioned my real Name, he advised me to tear them to Pieces, which we did. I consented afterwards to come to his House; but as my Creditors were Strangers to Mr. Black and might be in Quebec without his Knowledge, I determined not to go in, till after dark. Mr. Black staid a little longer with me, and we conversed upon indifferent Subjects, among the rest about Quebec, the Strength of the Place, and whether it could be taken or not. He left me shortly after. I got to his House about half after eight and was taken into Custody about eleven o'Clock the same Night.

Gentlemen of the Jury. I think I have now made every thing very clear, no Doubts can remain in your Minds, my Story is a very plain one, and you must see, from the Narrative which I have given, that I am an Innocent Man. The Witnesses, who have appeared against me, may all be honest Men, for ought I know, I have nothing in particular to object against them. But all are liable to mistake; and it is now evident how much they have been mistaken. They have grossly mistaken my Views, which were only Views of Trade and not at all Political. I rely upon your Integrity and Humanity, but I put my Trust in a much greater Power. I put my Trust in you, oh God! do thou pour into the Hearts of my Judges Wisdom and Knowledge; strengthen their inclination to do Justice, and impress on the Minds, of them, and on the Minds of this Jury, who are now to decide upon my Cause, the Innocence of thy Servant; and oh God, touch the Lips of these, thy young Servants, who are to speak in
my

my Behalf: give them Eloquence and persuasive Arguments: grant that their Endeavours may be successful, and that I may live to serve and glorify thee hereafter.

MR. PYKE.

Gentlemen of the Jury,

THE arduous and important Task of conducting the Prisoner's Defence has been assigned by the Court to my learned Friend Mr. Francklin and myself. Important this Cause must be acknowledged in every Point of View; but particularly as it regards the Prisoner: to him the Consequences will be serious indeed, should you by your Verdict find him guilty of the Crime of which he now stands charged, and arduous I must declare my task to be, when I consider my own Want of Experience; I could therefore, with the Prisoner's Counsel possessed of more Abilities than I can presume to. Nevertheless I confess, I feel a Degree of Confidence, when I reflect that I am before an English Tribunal, which is at all Times ready to extend its Indulgence to those unfortunate Persons, who are brought before it, accused of capital Crimes; and that the Court has been, and still is, considered, in some Measure, by the Laws of England, as Counsel for the Prisoner. On those accounts, I do not doubt but that I shall receive the Countenance, and Assistance, of the Bench, as well as your Indulgence (Gentlemen, of the Jury) in my Endeavour to discharge the Duty assigned me. And here I beg leave, to express my satisfaction to find, that the Prisoner's Fate is in the Hands of Men of your Respectability and Character, as it insures to him a just Verdict, knowing and well persuaded, as I am, that you are incapable of being governed by those Prejudices which influence only weak and unenlightened Minds, and that those false Reports, which have been circulated against the Prisoner, tending to render odious the Character of a Man already too unfortunate, will not with you have the smallest Weight. I am well persuaded also that, however Appearances may be against the Prisoner, nevertheless you will require positive and indisputable Evidence of the Charges brought against him; that Evidence which the Law, in Cases of High Treason, requires, amounting to the clearest Demonstration, and not mere Words, and vague Conversations, so liable to be misinterpreted by those who hear them: for, Gentlemen, when the smallest Doubt can be entertained in your Minds of the Guilt of the Prisoner, it is your bounden Duty to lean to the Side of Mercy and acquit him. Was the Prisoner

soner before one of those bloody Tribunals lately erected in that Republick, which has so long disturbed the Peace of Europe, he and his Counsel would have strong Grounds of Apprehension; but here they can have none, as they know and are satisfied that he stands before a pure and uncorrupt Tribunal, an English Tribunal, where Justice is mingled with Mercy and where Accusation and Suspicion alone are not sufficient Grounds for Conviction.

Gentlemen.

The Prisoner at the Bar, as has been stated to you on the Part of the Prosecution, stands charged in the Indictment with two distinct Species of Treason, the first, for compassing and intending to depose the King, and put him to Death; and the second for adhering to, aiding and comforting, the King's Enemies, contrary to his Allegiance. The able manner, in which my learned Friend the Attorney General has explained to you, Gentlemen, the Nature of the Crime of High Treason, and its different Species, makes it unnecessary for me to expatiate thereon; but, I must beg leave to differ from my learned Friend, in his Application of it to the present Case. Let us therefore examine, how far the Crime, of which the Prisoner stands charged, has been proved against him. Now, in order to support the first Charge in the Indictment, it was necessary, on the Part of the Prosecution, to prove the *Intention* of which the Prisoner is there accused, viz. the Compassing and Imagining the King's Death. Has this been done?—I contend it has not, nor is there a Shadow of Proof of any Intention on the Part of the Prisoner to depose and take away the Life of our beloved Sovereign: indeed it is absurd to suppose, that he had any such Idea, and it is equally absurd to suppose the Act of any Individual in this distant Part of his Majesty's Dominions, could, in the smallest Degree, affect the sacred Person of his Majesty, nor indeed could it possibly have that Tendency, should it even extend so far as to effect the Separation of Canada from the Dominion of the Crown of Great Britain.

Therefore, Gentlemen, no such Intention, as that stated in the first Charge of of the Indictment, being proved, against the Prisoner, you must be of Opinion, that this Charge stands unsupported; I will therefore urge no more on this Head, but will now consider how far the Evidence goes to support the second Charge in the Indictment, namely, "that the Prisoner was adhering to, "aiding and comforting the King's Enemies". Now to support this Charge it was necessary, on the Part of the Prosecution to prove, that the Prisoner had actually given Aid and Information
to

to our Enemies : but of this no Proof appears ; in lieu thereof an Endeavour has been made to prove an *Intention*, on the Part of the Prisoner to do so ; but the Law requires more, for, the Intention of giving Aid is not sufficient to support this Charge against the Prisoner, and in this it differs very materially from the first Charge. The Intention must be carried into Effect, at least so far as it regards the Person accused, and on this Account, altho' the Information sent never was actually received, as in the Case of intercepted Letters, the Crime however is considered as compleat on the Part of him who wrote and sent them ; but this has not even been proved against the Prisoner : indeed no other Evidence has been offered to you but of certain Conversations, which took Place at different Times, between the Prisoner and the Witnesses. The whole of which, as to any Design of overthrowing the Government of this Province, or of aiding the King's Enemies, appears to me to be altogether improbable : indeed we find from one Part of Frichette's Testimony, that he did not believe the Prisoner had any such Design ; for, on their Journey down to Quebec, Frichette says, he put the Question to him, when the Prisoner smiled and answered that he intended no harm to the Country. The Prisoner, as he has informed you, and which has been proved by several of the Witnesses, is an Alien, a Native and Subject of the United States of America, where he has hitherto always resided, and for a long Time was engaged in Trade ; but being unfortunate in his Business he became a Bankrupt and was in consequence much harrassed and persecuted by his Creditors, who threatened him with Imprisonment, and at length, to avoid this, he was obliged to quit his Home and Family to seek an Asylum in this Country. His Creditors even pursued him from the States here ; of this he received Information, and on that Account found it necessary to take upon himself the feigned Name of Jacob Felt, in order to elude their Pursuit. Having arrived in this Country, his first Object was to settle himself in some kind of Business, and, previous thereto, it was very natural and necessary for him to make some Enquiries into the State of the Province as well as to inform himself of the general Disposition of its Inhabitants. And what were those Enquiries ? was there not a Time when every Citizen of Quebec made the same. All Ranks and Descriptions of People here endeavoured to obtain Information of the Disposition and Sentiments of the Canadians in the distant Parishes. Thank God, those Enquiries are no longer necessary, however, I humbly conceive that they were

were not more Criminal in Mr. M'Lane than in any other Person. It must be acknowledged that the Conduct of the Prisoner has been in some Measure imprudent, but it surely has not been such as to justify you, Gentlemen, in convicting him of the Crime of which he is now accused; you must therefore acquit the Prisoner on this Charge also: and now I trust and hope, that whatever may have turned up favorable to the Prisoner in the Course of this Trial, and may be passed over unobserved by his Counsel, will be supplied by the superior Discernment of the Court, I therefore, Gentlemen, leave the Prisoner in your Hands, not doubting but that you will do him Justice, and by, your Verdict, at once acquit the several Duties which you owe to the Laws of the Country, the Prisoner and yourselves.

MR. FRANKLIN.

May it please your Honors, and you Gentlemen of the Jury.

I believe it is not necessary for me, to make any Apology for appearing here in Defence of the unfortunate Man at the Bar, as the Court has assigned me that Duty, which I shall endeavour to perform to the best of my Ability.—Gentlemen, the Prisoner has given you a Narrative of Occurrences, previous to his coming into this Province; he has unfolded to you his real Designs, and, I think, his Conduct must now appear to you in a Light, very different from that, in which the Counsel for the Prosecution, have endeavoured to place it. It is to be regretted, that Proof cannot be offered to you, of many Circumstances, which the Prisoner has mentioned, because they are only known to Persons resident in another Country; but, Gentlemen, I trust, it is sufficiently evident to you, that his Views were entirely of a private Nature, and by no Means hostile to the Government of this Province. Every Man, engaged in mercantile Pursuits, is liable to Misfortune; this was the Prisoner's Lot; he was a Merchant in Rhode Island, but met with considerable Losses, which obliged him to quit that State and seek for a Country where he might shelter himself from his Creditors, who were very pressing, and endeavour to repair his broken Fortunes. This Quarter of the World seemed to offer a Field for his Exertions; new Roads and Canals were much wanted for the Advancement of Agriculture and Commerce, and he flattered himself with the Prospect of exerting his Talents usefully in this Line of Business. He was, however, somewhat alarmed by various Reports, which he had heard,

of Discontent and Uneasiness among the Canadians; it was thought in the American States that this Country would shortly be involved in political Troubles, which he, very naturally, apprehended, might defeat his Plan and render his Situation very precarious. It became therefore a Matter of Importance to obtain correct and certain Information on this Head, and this will account for the Minuteness of his Questions respecting the State of the Province and the Disposition of the Inhabitants towards the Government; but, such being his Motive, there was nothing criminal in his Enquiries, nor can he now be charged with acquiring Intelligence, with Intent to communicate it to the King's Enemies. It has been observed by my learned Friend, who is concerned with me in this Defence, that Suspicion or doubtful Proofs are not sufficient to convict in Cases of High Treason. I heartily concur with him, and in his Opinion, that neither the first nor the second Count of the Indictment have been sufficiently substantiated. In support of the first Count, it appears to me necessary, to adduce Evidence of some direct Plan or Intention to take away the King's Life, as in the Case of Crohagan, who formed such a Design at Lisbon in a foreign Country; for, the Present is a constructive Compassing, and it must strike you as monstrous to suppose, that the Subversion of the Government of this Province would endanger his Majesty's natural Life, when even a Revolution, which severed thirteen Colonies from the British Empire, did not in the least affect his sacred Person. In England the case is different; it is there usual to charge Persons, concerned in Plots against the Government, with compassing the King's Death, and the Reason assigned by Mr. Justice Foster is, that Experience has shewn, that, between the Dethronement and the Grave of Princes, the Distance is very small. The same Reasoning will not apply here, and you must therefore acquit the Prisoner on this Count. As to the second Count, which charges the Prisoner with adhering to the King's Enemies, he has frankly acknowledged, that he did ask Questions, but with Views very different from those attributed to him, and, I trust, you are convinced of the Truth of his Assertion. It is your Duty to scrutinize most strictly the Evidence given against him, particularly as it partly comes from Persons charged as Accomplices, who, with their own Mouths, proclaim their own bad Character, and who, being implicated themselves, endeavour to shift the burden of Guilt from their own Heads, and ensure the Conviction of the Person under Trial, in order to save themselves from Punishment.

Gentlemen,

Gentlemen, Barnard has not told you, that the Prisoner once mentioned the French Republic, or the French Minister at Philadelphia, and I cannot help remarking a seeming Inconsistency in the Evidence of this Witness, who, though he told the Prisoner at their second Meeting, that he had given Information to Mr. M'Cord, a Magistrate, of their first Conversation at Laprairie, was yet entrusted with more of his Secrets. One would suppose that this Piece of Intelligence would have alarmed the Prisoner and made him distrust the Witness, but according to the latter's account, it did not in the least. Butterfield's Testimony is much relied on, but his Manner of giving his Evidence, the Indifference and Unconcern, he shewed in a Case, which affects the Life of a Fellow Creature, could not fail to strike you, and to shock the Sensibility of every feeling Person who heard him; he is entitled to little Attention from you, and you can give still less Credit to so prevaricating a Witness as Frichette, in my humble Opinion, you ought to disregard his Evidence entirely, as that of a Person wholly unworthy of Belief. Gentlemen, as the Crime of High Treason is of a heinous Kind, so is the Punishment annexed to the Commission of it—severe indeed: It behoves you then to construe every thing most favorably for the Prisoner, and not to condemn him, but upon the fullest and most satisfactory Proofs. He is a Subject of a Neighbouring Country, and a fair Opportunity now offers, to exhibit to them, an Instance of the Liberality and Impartiality of our Juries. The Prisoner with Gratitude acknowledges the Indulgence shewn by the Court and is very sensible of the Candour, with which the Prosecution against him has been conducted. Gentlemen, it does not occur to me, that any further observations are necessary, I will only remind you how scrupulously Juries in England have in modern Times weighed the Proof in Trials of the present nature particularly, in the late State Prosecutions. I entrust the Prisoner's Fate to you with Confidence; Gentlemen of your eminent Integrity and Discernment will doubtless consider his Case without Bias or Prejudice, and I feel assured that, by acquitting him, you will satisfy your Consciences and discharge your Duty to the Country.

Mr.

MR. ATTORNEY GENERAL,

Gentlemen of the Jury,

Notwithstanding the Lateness of the Hour, I must yet request your Attention for a short Time. It is my Duty to reply to what has fallen from the Prisoner and his Counsel in his Defence, and to offer to your Consideration what that Defence suggests to me. I am particularly bound not to neglect whatever tends to prove the Guilt of the Accused. Gentlemen, in the present Instance no Part of the Evidence on the Part of the Crown stands controverted by the Prisoner; on the contrary, he has admitted the different Meetings with Barnard, Cushing, Butterfield, Frichette and Black and even the Substance of the Conversations which passed between them. Some times he vindicates, at others he explains his Enquiries: he tells a Story in itself unsatisfactory, which, weak and trifling as it is, is at the first Blush evidently nothing; for, not a single Witness has been called to support it. The Object of the Defence is to induce you to believe that his Views in Canada were mercantile, not traitorous; but in this he is not consistent; one moment his Visit to Canada is to establish himself in Trade, another merely to avoid his Creditors. If we admit the latter to be the Object, why did he so often leave Canada, when, so long as he remained in the Province, he was free from Arrest? Must we suppose that he left it to meet his Creditors and insure a Prison. Again, admitting the former to be the Object, what could have induced him, when he made the Enquiries which the different Witnesses have stated, to have taken them apart into Bye-walks and private Rooms? Would he have informed them that he had a Secret of the utmost Importance to communicate? That he put his Life into their Hands? Or would he have exacted Oaths of Secrecy? Is it customary to require an Oath of Secrecy when a Merchant asks a Question upon Trade? Are commercial Enquiries so dangerous that, if known, the Lives of the Persons venturing to make them are in Danger. No Gentlemen this Conduct speaks loudly, it demonstrates that he was Conscious of the Guilt in which he was involved and well knew its Consequences. To proceed further, Is it a mercantile Transaction to tell Barnard, Cushing, Chandonet, Butterfield, Frichette and Black that his Object was to excite a Revolution in Canada: To plan the Introduction of Arms and Ammunition clandestinely; to solicit several to engage in a projected Invasion and Rebellion. To enlist others and to meditate and consult on the Means of delivering the Province into the Hands of the French Republic; to enter it under

under an assumed Name; to plan the Reduction of the strongest Fortress in the Country by Treachery, are these the Characteristics of commercial Concerns? Do these Enquiries resemble the Enquiries of a Merchant? He says they were Questions on the State of Trade, Questions which a man in Business would naturally ask who had a Design of settling in the Province: can we believe it when we reflect on their general Import, or when we recollect Questions to this Effect—are the People well affected to the Government; will they join with me—with the French Republic—and will they rise in rebellion against their lawful Sovereign? These are his general Questions while he avows himself, at the same time, to be in the Service of France, our mortal Foe; that he is on his Way from Canada to the Minister of the French Republic, at Philadelphia, to acquaint him with what he then knew with the Result of his Researches; Gentlemen these are prominent Features of that Inconsistency which marks the Defence. In other Particulars it is equally evident. The visit of the Mountain of Montreal bears no Affinity to Trade; it is examined by him not in a commercial but in a military Point of View, and in this View he observes upon it to Cushing. The proposal to distribute Laudanum amongst the King's Troops, the intended use of Pikes, not to be opposed to the Musket or Bayonet, but appropriated, I fear, for the more dreadful Purpose of Assassination, the Organisation of the Numbers he proposed to engage under ten Men of Influence, cannot be considered as mercantile Transactions, nor can they be supposed a Moment to have Relation to peaceable Concerns of any Description. Gentlemen if the Enquiries were in fact merely commercial; yet, the peculiar Conduct of the Prisoner, when he puts them, is such as would induce the strongest Suspicion of Guilt: on that I have already remarked; I have only to add that the Enquiries themselves, far from being commercial, are as strong Evidences of Guilt, as the black and mysterious Conduct with which they were accompanied—both united convince and take from the Mind every Shadow of Doubt.

The Prisoner, aware that the Paper, he produced to Cushing, must bear hard against him, has attempted, by an improbable Story, to explain it: it is extraordinary that he does not even recollect the Name of the Clerk by whom, he says, it was signed, while the Witness Cushing pointedly swears that it was signed, "ADET". But he is not singular in this Instance; the whole of his Defence is contradicted by the Evidence for the Crown, and stands totally unsupported by any Evidence in its Favor. He attempts to account for frequent Visits to Philadelphia: from whence

whence is this Solicitude? why is an Attempt made to account for Visits not charged against him? The Reason is obvious, Philadelphia is the Residence of the French Minister; and the Connection between the Visits to that City and the Journeys to Canada is too striking to escape Notice: he saw that unfavorable Inferences might be drawn and he has endeavoured to give them a Colour which they will not take. He has also attempted to account for his various Visits to Canada; but this was not necessary, he is not accused for having visited Canada once or oftener: his Intention to overthrow the Government of the Country, to which he came, under the Appearance of an innocent Stranger, is the Crime of which he stands accused.

Gentlemen, the Prisoner, unfortunately for himself, has wished to speak in his own Defence, and has admitted Points which his Counsel would not have allowed: he has strengthened the Evidence of the Crown, by what he has advanced in Justification of his Conduct; for, as I have observed, he has admitted nearly the Substance of the Evidence against him. I shall point this out in some Particulars.—He admits his Visits last Summer to Canada and his Return this Spring, under the assumed Name of Felt; the several Meetings with Barnard, Cushing, Butterfield, Chandonet, Frichette, and Black;—the Conversation with Chandonet respecting the political State of the Country; with Cushing respecting the Certificate from Mr. Adet; with Butterfield, respecting the sending for Frichette; with Frichette, respecting an expected Revolt of the Canadians and arming them with Pikes in Case of a Revolution and with Black respecting the Capture of Quebec. These Admissions are made with many others. In short Gentlemen, knowing the Truth of what has been submitted to you, he cannot controvert it: he admits all except those Parts of the Evidence which amount to direct Proof of Treason, and these his personal Safety forbids him to acknowledge: they must however be answered, and he opposes to them an explanatory Defence, unconnected, improbable and totally unsupported by Evidence, while he states at the same Moment that he has nothing to object against the Credibility of the Witnesses produced on the Part of the Crown.

Gentlemen, what his Counsel have said is but little, but I know not, in such a Case, how that little has been collected. It is however my Duty to pay as much Attention to their Arguments as to those of the Prisoner in Person. I perfectly agree with them that the Case is most important and requires the most serious Con-

sideration

sideration. I, as readily, admit that their Talk is most arduous; they are called upon, by their professional Duty, to weave a Defence without Materials. In the Prosecution of that Duty they have first endeavoured to prove that the Prisoner is a Foreigner. If any Advantage is to be derived from this Fact, they must receive it from the Court, not from You. Whether the Prisoner stands exonerated *by Law* from the Guilt of Treason because he is an Alien, is clearly a Point of Law. He is an Alien, they say, and therefore Candour and Liberality ought to distinguish the Trial: the Observation is just, they certainly ought; but though they use the Words Candour and Liberality, they recommend to you Partiality; but this is a Recommendation to which they could not expect your Attention. Incline as favorably to the Prisoner as his Case will allow; but remember that you cannot acquit a Foreigner on Evidence that would convict a Native.—They have said that there is no Proof of his Intention to kill the King personally. I beg to be understood, I have never advanced such an Absurdity. I refer to what I said at the Opening of the Evidence, it is the political, not the natural Death of the Sovereign at which the Prisoner has aimed. They have also said that there is no Proof of his having aided or assisted the Enemies of the King: the Cases of Francis Henry de la Motte, Florence Hensley, William Gregg and Thomas Vaughan, which have been cited, are directly in Point; no actual Aid in either of these Cases was given; their Intention to give Assistance was held sufficient to make their Treason compleat. They have also said that some of the Witnesses are Persons that have been accused as Accomplices with the Prisoner in his Treason. It is true, I have brought forward, on the Part of the Crown, two Witnesses who stand accused of the Crime charged against the Prisoner, and from their own Mouths you have heard that they were engaged by him for the express Purpose of overthrowing the established System of our Government, with a view to subject us to the Power and Dominion of the French Republic. But notwithstanding this, they are sufficient Witnesses in Law. In the Case of Lyster to which in the Course of this Trial I have often referred, Lynch and Plunkett, both Accomplices, were heard and Lyster convicted. A Verdict may be given on the Oath of a single Witness, but the Oath of an Accomplice corroborated by the Testimony of one unsuspected Witness has been always held sufficient. In this Case it remains with you Gentlemen, to affix that Degree of Belief to the Testimony of the Accomplices, which in your Consciences, you think proper. I will however remark that the

Evidence

Evidence of Butterfield and Frichette, is by no means weak; they do not stand alone, they are supported by the united Testimonies of Barnard, Cushing, Chandonet and Black: as to Frichette particularly, permit me to observe that you must have seen with what Reluctance he deposed against the Prisoner; this is surely the strongest Proof that he ought to be believed in all he has sworn against him.—Gentlemen, I heard with regret the Conduct of the Jurors in the Cases of Thomas Hardy and others lately decided in London, held up as Examples for your Imitation. I will not venture my own Opinion upon the Conduct of those Juries, but will appeal to the Opinion of the justly celebrated Mr. Burke, who, in a late Publication, has observed, with an Eye to these Trials, “that public Prosecutions are become but little better than Schools for Treason, of no Use but to improve the Dexterity of Criminals in the Mystery of Evasion, or to shew with what Impunity Men may conspire against the Government and Constitution of their Country.”

Gentlemen, I must yet detain you a moment: remark that the Evidence on the Part of the Crown is compleat. The original treasonable Design of the Prisoner against the King's Government is established by the united Testimony of Barnard, Cushing, Chandonet, Butterfield and Frichette, five Witnesses whose Depositions coincide in every Particular; his Return into the Province and Journey to Quebec, for the Purpose of putting that Design in Execution, is proved by Butterfield, Frichette and Black. On a Case so clearly proved by positive Testimony, not controverted by any Evidence on the Part of the Prisoner, I am confident, you cannot entertain a Doubt,

THE HONORABLE CHIEF JUSTICE.

Gentlemen of the Jury,

The Prisoner at the Bar, David M'Lane, stands indicted of the Crime of High Treason. The Indictment contains two Counts or Charges: the first, for compassing the King's Death, the second for adhering to the King's Enemies; and in Order to make good these Charges, fourteen several overt Acts or Evidences of Treason are imputed to him, the Substance of which is:

1. That He conspired with divers Persons unknown to solicit the Enemies of the King to invade the Province.
2. That He did solicit the King's Enemies to invade the Province.
3. That

3. That He conspired with the King's Enemies to excite a Rebellion in the Province, to invade the Province with Ships and armed Men.
4. That He conspired with divers Persons unknown, to raise a Rebellion in the Province, to aid and assist and to seduce the King's Subjects to aid and assist the Enemy in an hostile Invasion of the Province.
5. That He solicited and incited divers of the King's Subjects to levy War and Rebellion against the King in his Province of Lower-Canada; and to aid and assist the Enemy in an hostile Invasion of the same Province.
6. That He solicited and incited divers Persons not being Subjects, to levy War against the King in his Province, and to aid and assist the Enemy in an hostile Invasion of the Province.
7. That He made ready and raised several Men unknown, to levy War against the King within the Province; and to assist the Enemy in an hostile Invasion.
8. That He conspired with divers Persons unknown, to convey into the Province Arms and Ammunition, with Intent therewith to wage War against the King; and to assist the Enemy in an hostile Invasion.
9. That He collected Information whether the King's Subjects were or were not well affected, and whether they would or would not join the Enemy in an hostile Invasion of the Province, with Intent to communicate it to the Enemy.
10. That He acquired Knowledge of the Strength of the King's City called Montreal, and how it might be attacked and taken by the Enemy, with Intent to communicate it to the Enemy.
11. That, being possessed of the Information and Knowledge set forth in the two last mentioned overt Acts, he departed from the Parish of Quebec towards foreign Parts, with Intent to communicate it to the Enemy.
12. That He entered the Parish of Notre Dame de Quebec, &c. secretly and clandestinely under the feigned and assumed Name of Jacob Felt.

13. That He conspired with divers Persons unknown, to seize, by Surprise, the walled and garrisoned City of Quebec, one of the King's Fortresses or fortified Places, to cause a miserable Slaughter of and to destroy the King's faithful Subjects, and to deliver the City into the Hands of the Enemy, for the Aid and Assistance of the Enemy in the present War.
14. That He entered the walled and garrisoned City of Quebec, with Intent to seize it by Surprise, to cause a miserable Slaughter and to destroy the King's faithful Subjects; and to deliver the City into the Hands of the Enemy; for the Aid and Assistance of the Enemy in the present War.

These overt Acts are charged under each Count, and are laid in order to prove each Species of Treason.

Perhaps, Gentlemen, at this Distance from the Place of the King's personal Residence, You may think it unreasonable to impute to the Prisoner the Crime which constitutes the first Charge brought against him, namely that of compassing the King's Death; but, if the Facts laid, are found to be true, in Contemplation of Law, they have a Tendency to that fatal End; and such compassing always forms a Charge in Indictments for this Sort of Treason. True it is, that the overt Acts seem to range themselves most naturally under the second Count, for adhering to the King's Enemies, which is a distinct and positive Head of Treason. If then, you find any Difficulty in referring the Acts charged to the first Count, you may, if you think proper, direct your Attention to the Evidence given as tending to prove the second Count in the Indictment; which contains the Charge of a declared Treason and is therefore sufficient, if found, to support a Conviction.

Gentlemen, it ought to be a Matter of Satisfaction, both to the Court and the Jury, that, from a repeated Course of Determinations on this Subject, the Law is perfectly clear, and that we are travelling upon a well trodden Path. The Words of the Statute are in themselves plain and intelligible;—"If a Man do adhere to the King's Enemies, giving them Aid and Assistance in the Realm or elsewhere, it is declared to be Treason." Such is the Text, but the Cases that have been determined under this Clause go a considerable Degree further; for, it is not necessary, in order to complete the Crime, that the Aid and Assistance should be actually given, nay, it is not necessary to be proved that the Enemy should even know it was intended to be given, as I shall explain to you by and bye; but it is necessary you should see that the Aid and Assistance

Assistance was intended and that you should find it so. On the Subject of Intention, the Distinction that was made by the Attorney General, respecting the Nature of Crimes, by the English Law, is certainly true, that Crimes in general are not consummate by the Intention, and that they must, in order to complete the Guilt, be carried into Execution; but that Treason is an Exception to this Rule:—there is no Doubt, but the Observation, generally speaking, is just;—for, an Attempt to commit Larceny, Robbery or Murder does not constitute the Capital Crime: yet there is a Capital Crime which is not unfrequently brought before a Court of Justice, and of Course the Nature of it must have been often explained in your hearing Gentlemen, which offers the strongest Analogy to High Treason, and may therefore give you a better Insight into it, which is the Crime of Burglary. Burglary is defined to be the Breaking and Entering into a Dwelling House by Night, with an Intent to commit a Felony; it is not necessary that any thing should be carried away, not even of the Value of this Pen; but the Intent is left for the Finding of the Jury from the Nature of the overt Acts proved: if Evidence be given of the Breaking and Entering, these are overt Acts sufficient to call upon the Jury to determine with what Intent this was done; and if they believe it was with a felonious Intent, the Crime is complete, though, as I said before, no Property is carried away. So in the Case of Treason, if a traitorous intention is disclosed by Words or Writings and they are followed up by any Acts tending to execute such Design, although it be not complete, it is sufficient to ground a Charge of Treason, and it is left to the Oaths and Conscience of a Jury to say with what view such a step was taken, although the Party is stopped short before the final Purpose was carried into Effect; for, Common Sense tells us, we ought not to wait till the Mischief is completed.

Gentlemen, I am well apprized that it is not customary for the Bench to cite Authorities for the Opinions they deliver to the Jury. It being the Duty of the Bench to explain the Law, due Credit is expected for the Opinions they disclose, and I am happy to say that mine, since I have had the Honour of a Seat, have hitherto always met with a favourable Acceptance; yet, as in a Trial of such Expectation and Importance it cannot but be satisfactory to know what has been held on like Occasions, I shall not think it unbecoming to shew, by Cases resolved, that the Doctrine I advance has long since been declared, acted upon and confirmed by the most respectable Characters that have adorned the English Law.

Soon

Soon after the Abdication of James the II. Lord Preston and two other Gentlemen embarked on the Thames for France, with a written Plan, in order to induce Louis XIV. to invade England, pointing out the Number of Men requisite and the Time and Place fittest for the Attack, they were taken a little below Gravesend; and though the Design was not carried into Effect, it was laid down by Lord Holt and Chief Justice Pollexfen, as clear Law without Question, "if any Persons do go into France, to negociate such a Design as this, or do purpoe to go into France, and do any Act in order thereto, that is High Treason." Lord Preston was told from the Bench "you took Water at Surry Stairs, and every Step you made in Pursuance of this Journey is Treason wherever it was" These Parties were convicted (although they were leaving the Kingdom) of compassing the King's Death, as well as of adhering to his Enemies. The same Law was laid down in the Case of Vaughan, who went cruising under a French Commission, and though he had taken nothing, he was convicted and executed. In Queen Anne's Time it was discovered, that one Gregg, a Clerk in the Secretary of State's Office, gave Information to Chamillard, the French Minister, of some Expedition that was intended against Louis the XIV. his Letters were intercepted, and on these overt Acts he was indicted of compassing the Queen's Death, and of adhering to her Enemies: he pleaded guilty to the Charge and was executed. These Cases are all mentioned by Sir Michael Foster in his excellent Discourse on High Treason, where he draws this Conclusion, that the Entering into Measures in Concert with Foreigners and others, in order to effect an Invasion of the Kingdom, or going into a foreign Country, or even purposing to go thither to that End and taking any Steps in order thereto, these Offences are overt Acts of both Species of Treason. An other Case which carries the matter still further happened in the Reign of George the II: which was Florence Hensley's Case: He was indicted of compassing the King's Death and adhering to his Enemies. The chief Evidence against him were certain Letters that were intercepted at the Post Office, and never reached the Place of destination. This might perhaps be thought a strong Circumstance in Mitigation; but you shall hear what Lord Mansfield said at the Trial which I will read to You.

"As to the Law. " Levying War is an overt Act of compassing the Death of the King. An overt Act of the Intention of levying War, or of bringing War upon the Kingdom, is settled to be an overt Act of Compassing the King's Death, Soliciting

" a foreign Prince, even in Amity with this Crown, to invade
 " the Realm, is such an overt Act, and so was Cardinal Pool's Case,
 " and one of these Letters is such a Solicitation of a foreign Prince
 " to invade the Realm."

" Letters of Advice and Correspondence and Intelligence to the
 " Enemy, to enable them to annoy us or defend themselves, writ-
 " ten and sent in order to be delivered to the Enemy, are, though
 " intercepted, overt Acts of both these Species of Treason that
 " have been mentioned. And this was determined by all the Jud-
 " ges of England in Gregg's Case, where the Indictment, which I
 " have seen, is much like the present Indictment. The only Doubt,
 " there, arose from the Letters of Intelligence being intercepted
 " and never delivered; but, they held, that that Circumstance did
 " not alter the Case."

Gentlemen, perhaps you may think I have taken too wide a
 Field, but I am desirous that you should know the Opinion of the
 twelve Judges of England, on a Case that might appear to be
 attended with favourable Circumstances. It is certainly going much
 farther than is necessary on the present Occasion. I will there-
 fore endeavour to make amends by fixing your Attention to the
 Point of Law which ought to govern the present Case and which,
 I think, may be comprized in one Sentence, which is this,—every
 Attempt to subject this Province, or any Part thereof, to the
 King's Enemies, is High Treason, and every Step taken in Furthe-
 rance of such Attempt is an overt Act of High Treason. Here,
 Gentlemen, is a plain Text to assist you in pronouncing your Ver-
 dict. The Law on, the Subject is clear and intelligible, and it rests
 with you to determine, whether or no the overt Acts charged
 in the Indictment, or any one of them, was done in Furtherance of
 the Treason imputed to the Prisoner. It is my Duty, Gentlemen,
 further to observe to you, that, by a Statute passed in the Reign
 of King William, it is enacted, that no Person shall be attainted of
 High Treason but upon the Testimony of two lawful Witnesses
 to the same overt Act, or one of them to one and the other of
 them to another overt Act of the same Treason. These, Gentle-
 men, are the most material Points of the Law upon the Case which
 it is my Duty to mention to You. There is likewise another Cir-
 cumstance necessary to be observed in this particular Case, which
 is the Allegation contained in the Indictment, that open War is yet
 carrying on between our Sovereign Lord the King and the Persons
 exercising the Powers of Government in France. No formal Evi-
 dence has been offered to prove this Fact, because Public Noto-
 riety,

tiety has always been held as sufficient Evidence in such Cases ; and it will not occupy much of your Time, Gentlemen, to determine whether the Fact exists.

Having laid down these Principles, it becomes your Duty, Gentlemen, to apply them to the Facts given in Evidence, in Proof of the overt Acts charged in the Indictment. To assist your Recollection I will recapitulate the Evidence as I have taken it down ; making such Observations as may occur to me in the Course of it ; but in so doing I beg it may be recollected, that you are by no Means bound to adopt them ; if you think them pertinent and applicable allow them Weight ; if otherwise you will pass them over. In Matters of Law you are bound by the Judgment of the Court, respecting Matter of Fact ; You are to judge of the Credit due to the Witnesses that have been brought forward ; You are to impute the overt Acts given in Evidence, to such Motives as you think they may be fairly ascribed to ; for, 't is You who are to make the true Deliverance.

The first Witness called on the Part of the Prosecution, is William Barnard, who says—" I know the Prisoner at the Bar ; the first Time I saw him was in July, 1796. in the State of Vermont, near the Province Line : it was almost dark, the Prisoner told me he wished to have some Conversation with me : I slept on one side with him : He said he wished to be out of Sight : we walked upon the Shore of the Lake : he said he had something of great Importance which he wished to communicate, in the doing of which he put his Life in my Hands". Gentlemen, you will find in the Progress of the Evidence that the Prisoner made this serious kind of Address to several of the Witnesses, which is a strong Proof that he was well aware of the Criminality of the Business he came about. The Witness goes on—" I desired him then not to do it : he said I might think it singular that a Stranger should address himself in that Way, but that I was not a Stranger to him : He mentioned some Circumstances which shewed he had taken some Pains to find me out : that I had been recommended to him as a Person whom he could trust with a Secret : He desired me not to divulge it, which I promised ; He then said his business there was, to bring about a Revolution in Canada ; that he wanted some Person to take the Lead ; that if I would undertake it, he would make my Fortune : this was on the 26th. of July. I asked him who recommended him to me ; he would not tell who it was : I told him it was a plot of some Enemy to ruin me ; I was not his Man and turned short about : he requested me not to say any Thing about it ; that he should be in Mont-

" real

" real in a few Days, when perhaps I should think better of it.
 " About four or five Days after I saw him at Montreal, he asked
 " me if I had thought of what he had mentioned to me at the Lines:
 " I told him not much: He said, when I came to know who he
 " was, he hoped I should think differently, but if I would engage
 " not to take an active Part I should be protected. This was the
 " Substance of which I informed Mr. McCord, a Magistrate. I was
 " at La Prairie in November last, about the 7th. it is about three
 " Leagues from Montreal: I then met the Prisoner: I had pre-
 " viously seen him a few Days, but had no Conversation with him:
 " he then told me I must think differently of that Matter than
 " what I had done in Summer. I told him there had been some
 " Disturbances like what he had been talking about: He said those
 " Disturbances were against their Cause: he said this was certain-
 " ly a conquered Country; for, there would be an Army here in
 " the Spring. He then said, if he could depend on me he would
 " tell me something farther; that he wished me to take an active
 " Part in it; I said I would not." Now Gentlemen, if you believe
 this Witness, this is the second Time he mentions a Solicitation on
 the Part of the Prisoner that he, the Witness, should assist the En-
 my in the projected Invasion, which is the 5th. overt Act charged
 in the Indictment. The Witness, speaking of the Prisoner, goes on
 to say—" He said I might be of Service and need not appear
 " in it, by finding out where the Seminary and the Merchants kept
 " their Money: He wished me to sound the Minds of the People,
 " to know who were likely to be their Friends, and that I would use
 " my Influence among the Canadians to keep them still this Win-
 " ter; that a Blow would be struck in the Spring, at a Time when it
 " would not be expected: they wished to confine all those against
 " them, as they did not wish to take any Person's Life."

On his Cross Examination he said, he had no Promise from Go-
 vernment, and that the Prisoner told him he was a Subject of the
 United States. I observe that several of the Witnesses are exa-
 mined to this Point, and upon the whole it appears to be sufficient-
 ly established; but what Use is to be made of this Fact, I cannot
 immediately discover. By the Testimony of this Witness, as well
 as of every other, it appears that the Prisoner was a Sojourner
 in the Province, he therefore owed an Allegiance to the King whilst
 he remained within the King's Dominions, in Return for the Pro-
 tection he experienced and for the Security with which he posses-
 sed his Life and Property. It will not, I trust, be made a Questi-
 on, whether having availed himself of the Benefit of our Laws, he

is at Liberty to transgress them, because he is a Subject of a Foreign State, or that that can be offered in Extenuation.

The next Witness called on the Part of the Crown, Gentlemen, is Elmer Cushing, who is a British Subject, who has known the Prisoner ten or eleven Years. He says—"I saw the Prisoner at my House on the 5th. November last, at Montreal, he came before Breakfast, I was absent when he came, he took his Breakfast, went out and returned between three and four o'Clock: I observed his Cloaths covered with small Burrs: I asked him where he had been, he answered upon the Mountain of Montreal, and observed that it might be made a Place of great Command over Montreal, in Case of a War. He then began to talk of the Situation of the Country: I observed the Canadians had made a considerable Disturbance and seemed to be disaffected: on this he said he should wish to have some private Conversation with me: I retired into a private Room with him. He informed me he had a Secret which he wished to impart to me, which was of the utmost Consequence he would not mention it unless I would swear never to reveal it. I said my Word was sufficient; he said he could not reveal it unless I would first swear, for he was putting his Life into my Hands."—Here, you observe Gentlemen, the same solemn Address that was made to the last Witness by the Prisoner, which shews he was well aware of the Danger of his Enterprize,—"I said the Secret might be of Prejudice to me; he answered he could make it advantageous: I then told him I would conceal it: he made me make a solemn Promise not to reveal his Name: He then told me there would be a severe Attack upon this Province early in the Spring, that would at once overthrow the present British Government; that he had been employed in it ever since he had been in this Country, and so was still; he said the Attack would be made by a Fleet from France with ten or fifteen thousand Men: he said that the Fleet then on the Coast was intended for the Attack next Year, but that the Season was too advanced: he said he was employed by Adet the French Minister at Philadelphia and that he had something which would convince me he was not acting without Authority. He got his Saddle Bags and took a Pair of Shoes out of them, one of which had a Hole on the outside Sole, near the Toe. He pulled a Paper out from betwixt the two Soles, which was signed "Adet" It was written in an obscure Style in English, and was a Certificate that he, Adet, was concerned in the Family Affairs of the Prisoner."—Now Gentlemen, if you believe this Account
of

of the Witness, it certainly forms a Circumstance of such Suspicion, as to require some Deliberation on its Import. The equivocal Language of the Paper, the Place where it was deposited, are Matters to which your Observation need not be called. Family Concerns, the Conduct of a Law Suit, or the Purchase or Sale of Goods is the usual Pretence for a Correspondence to carry on dark Purposes: the Witness appears to be struck with this; for, he says—"I asked the Prisoner why the Paper was written in that Style; he answered it was a dangerous Piece of Business to go upon, and if the Paper should be found upon him, it could not be produced in Evidence. M^r Lane's Name was in the Paper; he said it was a Draft of his own, and that Mr. Adet would have signed any Paper he pleased. He said there was no Occasion for a regular Commission till Matters came to the Test; that he had just come from the French Minister and should immediately return to Philadelphia on his leaving Montreal, where he should receive his Orders and immediately set Sail for France; that he should not return to Montreal till Spring, to take the Command in that Quarter"—Now Gentlemen, should you believe the Testimony of this Witness, and I don't find any Attempt made to impeach his Credit, here is abundant Evidence to prove the third overt Act charged against the Prisoner, that he conspired with the King's Enemies to invade this Province; and this Evidence is confirmed by the next Witness, who swears to a Conversation with the Prisoner, in which the Prisoner acquainted him that he was employed by the French Minister for the same Purpose; so, that here are two Witnesses to one and the same, namely the third overt Act. The Witness, Gentlemen, goes on to say,—the Prisoner told me the Attack was to be made at Quebec and Montreal at one and the same Time; that the first Object would be to secure the Money and valuable Property to defray the Expenses of the War; and next to Secure all the Priests and leading Characters in the Province; effectually to secure was the Word: he said that those who were favourable to the Cause should be protected in Person and Property; and as for those who were adverse, it would fare hard with them; that he should be with a Number of Persons under him at Quebec, to be got in in Rafts or whatever Way he could, for the Purpose of breeding a Mutiny and Spiking the Cannon at the Time the Attack should be made: he did not expect to need the Canadians till the Blow was struck; that he himself was to command at Montreal; that Arms and Ammunition were to be furnished through the States, by the French

“ Minister Adet, at Philadelphia. He informed me he had a Number of Men in the States who had engaged to furnish a Number of Men each, which were to come in and assist at the Attack—This, Gentlemen, goes to establish the 4th. overt Act—He assured me that I might look upon this as a conquered Country; for, the French were determined to have it by Conquest or Treaty. He wished to engage me to take an Active Part in the Business, that I should have any Standing or any Reward I would wish to accept of.—Here, Gentlemen, is Evidence to the same overt Act that was sworn to by the first Witness Barnard, which, I think, is the fifth, that he solicited divers of the King’s Subjects to join in the projected Rebellion; and fully establishes the Proof of that overt Act likewise by two Witnesses.—“ He said if I would give every Information respecting the Country I should be protected in Person and Property; I told him I would make no Promises, nor have any thing to do with it: He said, you can certainly do this, to quiet the Minds of the Canadians till Spring; for, all this Disturbance of the Road Act is detrimental to the Cause. He then said he had gone as far as he could do, unless I would Promise to take an Active Part; that if I would do so he had other Matters to reveal; but if ever I revealed what he had said, my Life would be taken immediately.—He said I might alter my Mind, and if any one should come and tell me he came to talk on Family Matters, I might depend on not being deceived.”

On being Cross examined he says, he came down last Fall to give Information of a Plot against Government; but that he never mentioned M’Lane’s Name; that the Prisoner is generally reputed to be an American Subject.

Gentlemen, the Evidence of this Witness and the last is very material; they confirm each other in the general Account of the Project and, if minutely scrutinized, might be found to prove many of the overt Acts charged. I have pointed out one or two of them, on which there can be little Doubt, should you believe their Testimony.

The next Witness, Gentlemen, is Francis Chandonnet, a Subject of the United States; He says,—“ The first Time I saw the Prisoner was last Summer. In the beginning of the Winter, I saw him again; he came to a Place about three quarters of a League above the Line, in the United States: he met me on the Bank of the Lake. He asked me if my Name was Chandonnet

" I answered, yes: he asked me to take a Walk with him, as
 " he had something to communicate in Private. He told me he
 " was upon Business of the utmost Importance, and that he was
 " recommended to me as a proper Person to take a Part in it;
 " but I must promise never to divulge it; I told him I would
 " make no such Promise till I knew the Business: he said it was of
 " a Political Nature, which made it necessary. I again refused: he
 " said I would not be accessary to the taking away a Person's Life
 " therefore he would go on. He then told me he was employed
 " by the French to go into Canada and feel the Minds of the Peo-
 " ple, to see how they were affected to the present Government,
 " which Business he had already begun, and found that a large
 " Body of the Canadians could be raised to have an Insurrection
 " in the Country".—This Evidence, if believed, proves the ninth
 " overt Act charged in the Indictment; that the Prisoner collected
 " Intelligence respecting the Disposition of the King's Subjects to-
 " wards his Government, with Intent to communicate it to the En-
 " my, provided always that you, Gentlemen, believe it was with such
 " Intent. The Witness goes on, that—" the Prisoner said he had learned
 " I was going to live on the River St. Lawrence near St. Regis; that
 " that would be a very suitable Place for such a Person, if I would
 " join him to carry on his Plan, which was to secrete a Quantity of
 " Arms and Ammunition in Rafts, in the Spring of the Year, both
 " by Lake Champlain and the River St. Lawrence; that a Quan-
 " tity of Arms and Amunition might be concealed in Rafts in
 " Chateaugay River; that those would be the safest as supposed
 " to come from Upper-Canada"—This, you will observe Gentle-
 " men, goes to the eighth overt Act charged. The Witness proceeds
 " that—" the Prisoner said he had a Brother coming to the Lines,
 " with a large Quantity of Dry Goods; that these Goods were for
 " collecting a Store of Provisions against the Insurrection, which
 " would furnish him with a good Excuse to go backwards
 " and forwards, without being suspected. He pressed me to
 " take a Part, which I would not: he then told me if I was
 " to divulge any Thing of the Transaction, he must inevitably be
 " hung.

On his Cross Examination the Witness says, he is a Canadian
 by Birth, that he left Canada with the American Army in the Year
 1776, being promised a Commission which he had, and was after-
 wards naturalised. That he was taken up upon Suspicion and
 sent out of the Province as an Alien; but that, conscious of his
 Innocence

Innocence he wrote to Mr. Richardson, the Magistrate at Montreal that he was ready to take his Trial upon any Charge that could be brought against him : that, upon coming into the Province, he was subpoenaed to give Evidence.

Gentlemen, the next Witness that is called is Thomas Butterfield, who is a Subject of the United States, and lives, in Vermont. He saw the Prisoner in November last, and says, that—" the Prisoner asked me to take a Walk, and told me he had a Matter to inform me of, provided I would keep my Counsel, it would be of Advantage to me : He informed me he had been in Canada, in order to sound the Minds of the Canadians, and to see if they were willing to rise and take the Province out of the British Hands : that he had been in before, in the Course of the Summer, and had been out to Philadelphia on the same Business : he told me he was employed by the French Minister Adet and that he was then returning to him again at Philadelphia ; that he had been into Montreal ; that the Minds of the People were ready and willing to lend a Hand to surprise the Country, provided they had any one to lead them : he told me he was then going to Philadelphia to Adet with that Information"—Here, Gentlemen, is the fullest Corroboration of what the other Witnesses have sworn respecting the ninth overt Act.—" I asked him if he had any one he could depend on, he answered one Black or Blake, and mentioned a Number of others that he had seen : he mentioned one Barnard, whom I did not know : that he was going to make his Returns of what he had done in this Country, to Adet at Philadelphia : I understood him that he had a Letter from one Black or Blake to Adet, but I did not see it. We had some Conversation about taking Quebec : the Prisoner seemed to think, if that could be got, it would do ; and proposed bringing in a Number of People upon Rafts : He told me he should go on his Journey and expected to be back again about April or May. I undertook to engage with him in the taking of the Country. About the 20th. April he returned to Swanton and came to a Tavern close to my House. He gave me a wink to step aside, asked me if I had been in Canada during the Winter ; I said not : he asked whether I had heard his Name mentioned as to any discovery ; I told him not : he said he had heard he was discovered in Canada, and that it was not safe for him to go in. Next Morning he asked me to assist him with a Boat and two Hands to go to Isle la Motte ; I procured the Hands for him. On the 26th. or 27th. of April

“ April he engaged me to go to St. John’s in Canada, to fetch
 “ Frichette to him. He gave me Money for my Expences, and I
 “ did my Errand and brought Frichette : they walked out toge-
 “ ther, after which he told me he had determined to go into Ca-
 “ nada with Frichette. The Prisoner told me the Money I gave
 “ you was not for your Pay, but for your Expences; your Pay
 “ will begin from the Time you undertook.”—This, Gentlemen,
 is Evidence on the seventh overt Act, which charges the Prisoner
 with enlisting several Persons.—“ He told me that he and Fri-
 “ chette were to go to Quebec to view the Place and lay some
 “ Plan to take the Place, but what Plan he could not say, till he
 “ had seen the Place : he told me he had left all his Papers with his
 “ Brother at Mr. Scovill’s ; that Scovill had moved to Swanton
 “ to make a Home for him and his People.

On his Cross Examination he says—“ I first saw the Prisoner
 “ about last April was a Year. I don’t know whether he is a Sub-
 “ ject of the United States, he told me so ; he told me he was
 “ born in Boston. I was taken up in May last for aiding and as-
 “ sisting this M^r. Lane, and was sent down in Custody.” An
 Objection was made, Gentlemen, to this Witness’s Testimony, on
 the Ground of his being an Accomplice : if this Doctrine were to be
 allowed, it would be a very difficult Matter ever to obtain a Con-
 viction in a Case of High Treason. Men engaged in treasonable
 Attempts do not publish their Intentions at the Market Cross. It
 is very rare that direct Testimony can be had from Persons not
 implicated in the Crime. In the Trials upon the Assassination Plot, in
 King William’s Time, every Witness, as far as I can recollect, was
 an Accomplice ; they are admitted for Necessity’s sake, or the most
 dangerous Treasons might pass unpunished. It certainly is an
 Imputation upon their Credibility, and the Jury are to determine
 on the Extent of it ; but it is equally certain that it does not affect
 their Competency.

The next Witness called, is Charles Frichette. He says “ I
 “ know the Prisoner : I saw him first in June, 1796 by the Name
 “ of M^r. Lane. He came to my House at St. Johns and asked if
 “ I knew one Frichette ; I said I am the Person ; have You any
 “ Horses ? Yes—We went into the Field ; he asked me if I could
 “ keep a Secret and was an honest Man ; I told him not to trust
 “ me too much : He said he had a Secret which he could not tell
 “ without an Oath ; I took an Oath : He asked if I would go to
 “ Philadelphia or to France ; I asked for what ; He said to see
 “ the French Minister ; I said no, it was too far ; He asked me
 “ if

" if I could procure a Signature of five or six honest Persons; I
 " asked why; he said to shew there were more People who wished
 " for a Change of Government than were contented with the present
 " Government: I said it was impossible. He bid me not be afraid;
 " that he was an Officer in the French Army: He asked repeat-
 " edly for the Certificate; but I did not procure it. About the
 " End of April Butterfield came for me: I went to M'Lane: He
 " gave me a good Reception: He asked what News in Canada;
 " I said none; If he might go thither; I said yes: He then said
 " we will go together, perhaps to Quebec: We agreed to go but
 " did not go by St. Johns: We passed behind the Fort at Day-
 " break and proceeded on the South shore Road to St. Nicholas:
 " We had much Conversation: He said the Country wanted some
 " English Farmers for its Improvement: He asked me why the
 " Prisoners in Gaol at Quebec were confined, and whether I
 " thought the Canadians would Revolt; I said no, they were not
 " very warlike nor desirous of a War: He did not tell me he was
 " come to make a Revolt: he laughed when he spoke about a
 " Revolt: He asked me if I knew one Black a Member of the
 " Parliament; I said no: He afterwards told me he was come to take
 " Quebec: I said if I thought so I would go back: He said he did
 " not mean to hurt any Body; that if he had 500 Men with Pikes
 " of Wood, 6 or 7 Feet long, he would take the Town; this
 " was said at St. Nicholas: He desired me to ask my Brother
 " respecting the People in Quebec, why they were in Gaol; I
 " did so; He told me for making Disturbances about the Road
 " Act: We came to Quebec together, landed at Wolfe's Cove:
 " He sent me for Mr. Black: I found him and took him to
 " M'Lane: He desired Mr. Black to excuse the Liberty he had
 " taken in sending for him, being a Stranger he was afraid of be-
 " ing suspected: This was about two o'Clock in the Afternoon:
 " Black then told the Prisoner that I had informed him of the
 " Intention of the Journey: Mr. Black advised him to go back;
 " for, the Canadians were not worth doing any thing for; Mr.
 " Black asked the Prisoner what Plan he had for taking the Town;
 " the Prisoner answered it was very easy to take it with five Hun-
 " dred Men; that he would take it very easily; that each Man might
 " be armed with a Pike about six or seven Feet long, pointed
 " with Iron and hardened in the Fire; and if the Town Gates
 " were open, one Company might come in at one Gate and ano-
 " ther at another Gate, and strike at the same Time: He said the
 " Troops would be so surprized that they would not know which
 " way

“ way to turn: at this Time I fell asleep: when I awoke I heard the
 “ Prisoner say to Mr. Black, that some thing might be given to the
 “ Troops to set them asleep; Mr. Black said that would do very
 “ well, that the greater Part of the Troops were Volunteers, who
 “ desired nothing better than to lay down their Arms. He told
 “ the Prisoner not to be afraid, but to come to his House, to dress
 “ himself like a Gentleman and take a Walk about the Town; at
 “ length the Prisoner consented to come, but Mr. Black did not
 “ approve of coming in with him, because he said he himself was
 “ watched. He desired me to bring him to his House in the
 “ Evening, which I accordingly did: the Prisoner told me to call
 “ him *Felt*; which I did.” The Witness is in Custody for High
 Treason, Gentlemen, You have seen the Manner in which this
 Witness has given his Evidence; He seems to have little know-
 ledge of the Sanction of an Oath, or at least little Regard for it,
 from the disgraceful Way in which he gave his Evidence. This
 is one of the Advantages of an open Examination in the Face of the
 Country. You are to judge of the Credit due to his Testimony;
 but, for my own Part, except in Matters where he is confirmed by
 others and what he has said of Evident Facts, I should not be much
 disposed to believe him.

The next Witness they called, Gentlemen, is John Black. He
 says that “ Frichette the last Witness called at my House on the
 “ 10th of May last, to know if I would buy any Oak Timber,
 “ which we bargained for; afterwards he told me he wanted to
 “ speak with me in Private; I went with him into another Room
 “ when he took me by the Hand, saying, You will be surprized
 “ when I tell you I have no Oak to sell, I am come upon a Bu-
 “ siness of a quite different Nature; then squeezing me by the
 “ Hand, he said, are you the Mr. Black that was in Gaol in the
 “ Year 1794? I told him I was; you have been much injured
 “ but your Injuries are now almost at an End, the French and
 “ Americans have taken up your Cause and you will soon triumph
 “ over all Your Enemies. I wished to know why he came to me;
 “ for, I had already been caught by insidious Men; then taking
 “ me by both Hands, he said, are you really to be depended on; I
 “ told him I was to be depended on; then says he, there is a French
 “ General within a Quarter of a League from this Place who wishes
 “ to have a Conversation with you respecting the taking of the Gar-
 “ rison of Quebec. I asked by what Means; has he an Army:
 “ he answered no he has no Army, he wishes to concert
 “ Measures with you, and you must come immediately with
 “ me

“ me to see him. About two o’Clock we set off together on Foot,
 “ across the Plains of Abraham, down by Wolfe’s Cove and up
 “ Mr. Mabane’s Hill : when we came to the Side of the Wood
 “ Frichette asked me to go in with him, I at first declined it, Fri-
 “ chette went in ; he came out again shortly after, and I saw him be-
 “ ckon to me, I then went about 200 Yards into the Wood, where
 “ I found the Prisoner with a very long Beard : he shook Hands
 “ with me and expressed himself glad to see me, begged Pardon
 “ for sending for me, but added that he wished to see me on a Mat-
 “ ter of great Importance. I think it proper for me to mention here
 “ that I never saw the Prisoner till I then saw him in the Wood,
 “ nor had I ever heard of or knew there was such a Man in
 “ Existence ; and as I was uncertain in regard to my Situation
 “ when thus in the Wood, I therefore agreed to every Measure
 “ the Prisoner proposed.”—Gentlemen, on this Occasion the Court
 think it a Matter of Justice due to Mr. Black thus publicly
 to declare their Opinion, that through the whole of this Business,
 he has behaved like a Zealous and faithful Subject and has conducted
 himself with great Propriety and Discretion, he goes on to say—
 “ The Prisoner then said his Man had told him that he had explained
 “ to me a Part of his Plan. My Plan said the Prisoner is that
 “ of Humanity, I am sorry to see a great People labouring un-
 “ der the Tyranny of England. I propose to push the British
 “ Government from the Continent of America. I asked him by
 “ what Means, he answered, eight or ten Men of Influence, such
 “ as I might be one, might raise, under plausible Pretences, as
 “ many People as possible, who at a certain appointed Time,
 “ would join with others, who were to come in to him from the
 “ States under various pretexts of seeking Labour, and that he
 “ would arm them with Pikes eight feet in Length, headed with
 “ Iron and hardened in the Fire, which he considered to be 18 In-
 “ ches longer than the British Musket and Bayonet”—This, Gentle-
 men, is direct Evidence in support of the 13th and 14th overt Acts
 charged, and being thus seriously mentioned to this Witness by the
 Prisoner, may explain to You the real Drift of his Conversation
 with Frichette to whom he did not probably chuse, in the first
 instance to open his Scheme in positive Terms. The Witness
 then goes on to say, that—“ the Prisoner thought Laudanum
 “ might be given to the Troops with Effect : that the Attack must
 “ be sudden; they would rush in, but not take a Life if possible to
 “ avoid it : he hoped none would be taken, but at the same Time,
 “ for the sake of Posterity, all who resist must fall : he further ob-
 “ served to me we must take Care not to injure the Works ; for,
 “ that

" that would render us vulnerable after we were Masters of the
 " Garrison." Here Gentlemen, is an Avowal, as express as Lan-
 guage can make it, of his Design to execute the Project charg-
 ed against him in the 13th. and 14th. overt Ads—" The
 " Prisoner said he left Mr. Adet on the 7th. of April, who was
 " going to France on the 10th. that both he and the Spanish Mi-
 " nister were concerned in the Measure; observing that " Adet is
 " the Man of Business, the Spaniard is a Fop: the Prisoner said
 " he had so concerted Measures with Adet that, if we could but
 " possess ourselves of the Garrison by Surprise, it could never
 " be recovered from us; for, he said, besides the Measures taken
 " by the French and Spanish Ministers, I have 15,000 Men at the
 " Lines ready at a Nod, with Part of which I mean to Garri-
 " son this Place and with the Remainder perhaps form an Expe-
 " dition against Halifax. Till the latter Part of our Conversa-
 " tion I understood his Name to be Felt; but he then gave me
 " two Letters; one directed to John Blackwood, Esq. the other
 " directed to myself, recommending the Prisoner as a Gentleman
 " highly worthy of Notice, by the Name of Colonel David M' Lane.
 " He told me that Mr. Adet was gone to Europe for the Pur-
 " pose of bringing a Force to cooperate with the 15,000 Men
 " that were to be brought in from the States: he made great En-
 " quiries concerning the Property, public and private, in Québec; I
 " told him I thought there might be from three to five hundred
 " thousand Pounds: he said the Property was intended to be
 " given to those who should take the City: He told me that he
 " had been in the Province in October last, that the Government
 " boasted of having quelled the Tumults at Montreal, but that
 " in reality it was he that had done it, I advised him to
 " come into Town after dark; he expressed his Fears at being
 " discovered, and said that Government had offered 500 Dollars
 " for his Person; However, he consented and gave me his Pocket
 " Book, in which his Name was written, to prevent Detection
 " in Case he was taken. He was conducted by Frichette to my
 " House when Night came on; As soon as I came to Town I gave
 " Information to a Magistrate; and the Prisoner was apprehen-
 " ded the same Evening, about eleven o'Clock, at my House."
 Here, Gentlemen, is a very clear and distinct Account of many of
 the material Parts of this Transaction; it confirms the Account
 given by the former Witnesses of the Prisoner's being at Montreal in
 October last, and is direct and Positive with regard to his Intentions
 on his last coming-in; and coupled with the Testimony of Fri.

chette, in those Parts where he confirms it, amounts to a full Proof of the overt Acts mentioned just now, and also of the 12th. which charges the Prisoner with having assumed the Name of Felt, for the Purposes therein assigned; and in this Particular he is further confirmed by the Evidence of Mr. Ryland, who is the last Witness called, who says,—“ between 11 and 12 o’Clock at Night, on the 10th of May, I received a Deposition made by the last Witness containing in Substance the Evidence which he has just given, from which I learnt that M’Lane was in Quebec. I communicated it to the Governor, and, by his Order, went with a small Party of Soldiers, to apprehend him. I found him in Bed at Mr. Black’s House, in the Suburbs: I awoke him, and asked him what his Name was; he said Felt; I told him I understood it was M’Lane; he again asserted that his Name was Felt, and that I was mistaken. I wished to give him a Receipt for the Monies he had with him, and asked him in what Name; he answered Jacob Felt: I gave him a Receipt for Monies found on Jacob Felt, alias David M’Lane”—on being cross examined, he says, that the Conduct of the Prisoner was perfectly decent and recollected, not like a Man conscious of any Crime.

This, Gentlemen, is the whole of the Evidence; for, on the Part of the Prisoner they have called no Witnesses.—The Prisoner (not very judiciously, I fear,) has undertaken to make his own Defence: that Defence you have heard, in which he admits a Number of the leading Facts alledged against him by the Witnesses; but attempts to put a different Colour upon some and to explain away others. You have likewise heard his Counsel, who have availed themselves of all the very slender Topics the Nature of the Case afforded in the Prisoner’s Behalf. You have likewise heard the very able and satisfactory Reply, made by the Attorney General, to the Defence that has been set up, who, by a few very Natural, but Cogent Questions, has shewn how little these Transactions partake of a mercantile Nature. But, Gentlemen, You will please to recollect that it is not from the Speeches You hear, but according to the Evidence You hear that You are sworn to deliver your Verdict.—That Evidence I have repeated to You as fully, as I am able; and it appears to me, that by far the greater Part of the overt Acts charged have been fully proved according to the Statute. I will not undertake to ascertain in this cursory Manner, the precise Number, because, in so serious a Matter, I should be sorry to hazard any Thing in which I
am

am not perfectly founded. The fifth and sixth overt Acts are clearly proved, because, You may recollect that (excepting the last) every Witness produced, whether Subject or Alien, swore to a personal Solicitation of them by the Prisoner, to assist in the Invasion. Now the Substance of the 5th. overt Act is, that he solicited divers of the King's Subjects; and the 6th. that he solicited divers Persons not being Subjects; Butterfield and Chandonnet are of this Description, and the four others are Subjects. The ninth, tenth and eleventh overt Acts, are proved by Barnard, Cushing and Butterfield, the two former prove the 9th. and 10th; they mention the Prisoner's Departure from Montreal, and Butterfield swears that the Prisoner told him he was going to Philadelphia, to make his Returns to Adet. This Intercourse with Adet, which is sworn to by several, namely Cushing, who also speaks of the Certificate in the Shoe, together with Butterfield and Black, is the Substance of the third overt Act, that he conspired with the King's Enemies to excite a Rebellion in the Province. The 13th and 14th. overt Acts, that he conspired to surprize the walled and garrisoned City of Quebec, are proved by Frichette and Black; who also prove his assuming the Name of Felt, the 12th. overt Act, in which they are confirmed by Mr. Ryland. The taking the Name of Felt is not in itself criminal, unless it be for the Purpose charged in the Indictment, in which Case it is certainly an overt Act. The seventh overt Act, which charges him with enlisting several Persons is, I believe, only proved by Butterfield, and the eighth that he conspired with others to introduce Arms and Ammunition is, I think, only sworn to by Chandonnet;—This is precisely the Case that was foreseen by the Statute of William, namely, where one Witness speaks to one overt Act, and another Witness to another overt Act of the same Kind of Treason. So that, if there was no other Evidence in the present Case but that of Butterfield and Chandonnet, confined to these two Acts, it would rest with You to consider of their Evidence, and if you believed them, such Testimony would alone be sufficient to support a Conviction under the Statute. But, by the Evidence that has been laid before You, you are not reduced to these Streights. Should you believe the Witnesses that have been produced, and no Attempt has been made to impeach their Credit (on the contrary the Prisoner, with a becoming Spirit of Candour, admits, for ought he knows, they may be all honest Men) it is my Duty to tell you, they have proved sufficient, and more than sufficient to maintain the Indictment. Sorry am I to say, that nothing

thing in the Shape of Evidence has been offered in behalf of the Prisoner, or I should studiously give it all the Weight to which it might be fairly entitled. An Objection was taken that some of the Witnesses were still in Custody as Accomplices; I have already given an Opinion on that Head, and marked what Degree of Credit ought to be given to the disgraceful Evidence of Frichette: but admitting the Objection to have that Force which it has not, how is the Testimony of the other five disinterested Persons, whose Characters are beyond Reproach, to be disposed of? I believe it will rarely be found, in State Prosecutions for Treasons of this sort, that out of seven Witnesses five are not in the most distant Manner implicated in the Transaction. From the State of the Evidence as it lays before You, Gentlemen, You have, no Counterballance to examine, for it is all in one Scale. The whole must turn upon that Degree of Credit to which You think the Witnesses, some of whom are known to You, are entitled. A considerable Period of Time, and a Variety of Circumstances are contained in the Scope of their Evidence. If it could be supposed that any sinister Design were intended against the Prisoner, this would be the worst Way of conducting it; as by the Breach of a material Link, when every connecting Part is subject to Proof, the Chain might fall to the Ground. On the other Hand, it must be more satisfactory to You, Gentlemen, who have your Consciences to deliver, should you find the Charge made out by the uniform and consistent Testimony of different Persons, in different Places, and at different Periods, than if it were a single Fact to be proved at one Time and Place: for to those, accustomed to the Investigation of Crimes, the former Sort of Proof, as it is most difficult to be made out, has always appeared the most convincing.

Having thus endeavoured Gentlemen, to explain the Law in this Case, and having repeated the Evidence, it remains for you to determine upon that Evidence; for, the Verdict must be yours. If you have any reasonable Ground of Doubt I need not observe to you that it is the invariable Direction of an English Court of Justice to lean to the Side of Mercy. If you disbelieve the Evidence in all its Parts you cannot convict the Prisoner: on the other Hand, if you believe the Witnesses, and that the Treasons charged against him, or either of them, have been clearly and satisfactorily proved, you will find him guilty; the whole is left to you, to determine this Issue according to your Oath.

Then

(Then an Officer was sworn to keep the Jury, who withdrew for about twenty Minutes and then returned.)

Clerk of the Arraignment. Gentlemen of the Jury, answer to your Names, John Blackwood, &c. &c.

Clerk of the Arraignment. Gentlemen, are you all agreed upon your Verdict?

Jury. Yes.

Clerk of the Arraignment. Who shall speak for you?

Jury. Our Foreman.

Clerk of the Arraignment. David M'Lane, hold up your Hand. (which he did) Look upon the Prisoner: How say you—Is he Guilty of the Felony and High Treason whereof he stands Indicted or not Guilty.

Foreman. GUILTY.

Clerk of the Arraignment. What Goods or Chattels, Lands or Tenements had he at the Time of the Felony and High Treason by him committed, or at any Time since?

Foreman. None to our Knowledge.

Clerk of the Arraignment. Then hearken to your Verdict as the Court hath recorded it—You say, that David M'Lane is Guilty of the Felony and High Treason whereof he stands indicted—But that he had no Goods or Chattels, Lands, or Tenements at the Time of the Felony and High Treason by him committed or at any Time since to your Knowledge, and so you say all.

Jury. Yes—We do.

Clerk of the Arraignment. Gentlemen of the Jury, the Court discharges you, and thanks you for your Service.

MR. ATTORNEY GENERAL. Upon the Verdict as recorded, I humbly move for Judgment of Death against the Prisoner.

MR. PYKE. This is unexpected. We hope the Court will allow us the four Days which are usual to move in Arrest of Judgment.

MR. ATTORNEY GENERAL. In Cases at Bar, four Days are usually allowed; but in Cases decided before Justices of Oyer and Terminer the Practice has been different. In the Instances of Sir John Freind, of Charnock, of Lowick; and very recently of La Motte, all tried under Commissions of Oyer and Terminer, Judgment was given Instantly. If the Gentlemen have any thing to move in Arrest of Judgment, they have now the Opportunity. I am ready to answer them.

CHIEF JUSTICE. The Practice certainly is as the Attorney General has stated it. He moves for Judgment, and we are bound

to pronounce it, if nothing to arrest it, is offered by the Prisoner.

CLERK OF THE ARRAIGNS. David M' Lane, you stand convicted of Felony and High Treason in compassing the Death of the King, and in adhering to his Enemies—what have you to say why the Court should not give Judgment against you to die according to Law.

PRISONER. My Counsel will state what I have now to offer.

MR. PYKE. May it please your Honors. We have two Points to move in Arrest of Judgment, and humbly hope that Time may be allowed us for that Purpose.

CHIEF JUSTICE. What are they, is the Attorney General apprized of them?

MR. PYKE. The first is, that the Statute on which the Indictment is framed is a local Statute, and not in Force in this Province; the second that the Indictment does not state the Prisoner to be a Subject of our Lord the King. The Grounds have been mentioned to the Attorney General.

CHIEF JUSTICE. It rests then with the Attorney General. You have had Time sufficient to prepare yourselves; but that may not be the Case with the Attorney General:—If he is ready to oppose the Motion the Court are ready to hear it, otherwise it may stand over till Monday next.

ATTORNEY GENERAL. The Points have been mentioned to me, I am ready to go upon the Motion immediately.

CHIEF JUSTICE. Then go on.

MR. PYKE.

May it please your Honors.

We beg leave to move in Arrest of Judgment upon two Grounds; first because the Statute of 25. Edward III. upon which this Indictment is grounded, is a local Statute, confined, to the Realm of England, being made for the sole and express Purpose of protecting the Person of his Majesty and his Government at Home, and does not extend to his Majesty's Colonies or any of his foreign Dominions, for, the Words of the Statute are, "When a Man doth compass or imagine the Death of our Lord the King—If a Man be adherent to the King's Enemies *in the Realm*, giving to them Aid and Comfort in the Realm or elsewhere.—If a Man do levy War against our Lord the King *in his Realm*." By all which it clearly appears, from the express Words of the Statute, that it is confined to the Realm of England: Now by the Realm of England is meant that Part of Great Britain called England, and therefore this Statute cannot be considered as in Force in Canada.

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The second Ground is because it is not stated in the Indictment that the Prisoner was a Subject of our Lord the King. This, may it please your Honors, I conceive to be an essential Part of an Indictment for High Treason; indeed, I consider it as it's Basis, without which it cannot stand; for, it is a clear Point that none but Subjects owe Allegiance, and consequently none but Subjects can be guilty of the Crime of High Treason, and therefore, unless we state the Person accused to be a Subject, in the Indictment, we cannot conclude *contra Ligantia suæ debitum*, because we have not first shewn that he owed that Allegiance; and this I conceive, is the Reason why, in the Case of La Motte, who was a Foreigner, the Indictment stated him to be a Subject of our Lord the King. I therefore humbly submit these two Objections to the Consideration of your Honors, and trust you will find them good and valid.

MR. FRANCKLIN.

May it please your Honors.

I rise to support the Motion in Arrest of Judgment, and I think the Grounds on which it is made, are sufficient, and will so appear to the Court. The first Objection goes to destroy the Base Work of the whole Proceedings; but, should not that be found valid, we will then rest upon the second, which attacks what we conceive to be a fatal Informality in the Indictment. This is, I believe, the first Instance, where a Question respecting the Law, which ought to govern the present Case, has been raised, in order to make an Object of legal Discussions and Decisions in an English Court of Law in America; but though it has so happened, that no Convictions have before taken Place on the Statute of the 25th. Edward 3d. Cap. 2d. the Prisoner's Counsel have not been the first to support the Idea, that this Statute does not extend to the Province; it is a Subject, which has been already canvassed extrajudicially, and Opinions given upon it. If there is room for Doubt, that is a sufficient Reason why the Question should now be determined by the Court, that the important Law of High Treason may be clearly settled. Our objection is, that the Statute of the 25th. Edward 3d. was local, operating in the Realm of England only and intended to punish Offences of Treason triable within the Kingdoms, and that it was not therefore comprehended in the eleventh Clause of the Act of the 14th. Year of his present Majesty's Reign, Cap. 83. commonly called the Quebec Act, which introduced the criminal Law of England into this Province. The Words of the
Statute

Statute of Edward the 3. especially, refer to the Realm of England, and it being once, in Maurice Howard's Case, made a Question whether Ireland was to be considered as Part of the Realm of England, it was ruled that it did not form Part of it. To have made the Statute Part of the criminal Law of this Province, I humbly contend the Provincial Legislature ought to have re-enacted it, as was done in Ireland by their Parliament, and our Courts should not have been left to consider, *by fiction*, the Province of Lower-Canada as the Realm of England in Relation to Offences committed within the Province. It is a Matter of that Importance that demands the Interference of our Legislature. I submit the Point with all due Deference to the Court. I come now to the second Ground of the Motion in Arrest of Judgment, namely, the Prisoner is not averred to be a Subject of the King, which, I apprehend, was essentially necessary to make the Indictment a good one. Persons living under the Protection of our Government, may be considered as falling under two Descriptions, natural born and temporary Subjects; both owing Allegiance; but, the former a permanent Allegiance, which he can never shake off. If the Prisoner owed no Allegiance during the Time he remained in the Province, certainly he would not have been called here to answer for the Offence of which he has been convicted; but it was in consequence of his being a temporary Subject, that Allegiance was due from him, and the Indictment should have averred him to be a Subject of the King. In support of this Doctrine I can appeal to the Precedents of Francia's and Delamotte's Cases, who were both Aliens, but notwithstanding alledged to be Subjects, in which Light, doubtless, they were considered *quo ad* their Residence and the Protection afforded them by the King's Government under which they lived. In Francia's Case this Notion was even carried too far; for, the Indictment charged him with Compassing the Death of his *natural Lord the King*, but his Counsel took an exception, and I admit it was a valid one, for, the Allegation was contrary to Fact, and all the Writers say, that these Words will vitiate an Indictment against an Alien. Our Exception is different from that which was made in the Case last cited; but I think equally strong, for, the Indictment does not, on the Face of it, shew why the Prisoner owed that Allegiance, for the Violation of which a Verdict has been given against him. The Counsel for the Prosecution cannot then obtain a Judgment, against the Prisoner when they have no Law to ground their Proceedings upon; or admitting they have, there is a fatal Omission in their Indictment.

ment. I humbly submit our Motion in Arrest of Judgment to the Court, and am fully confident that the Arguments we have offered in Support of it, will receive all the Consideration they merit, in Favor of Life.

MR. ATTORNEY GENERAL.

May it please your Honors.

The Grounds on which this Motion in Arrest of Judgment is made, are these,—That we have no Law on which our Indictment can be founded; and that not having averred the Prisoner to be a Subject of his Majesty at the Time of the Offence committed, the Indictment itself is essentially defective. The first of these Objections appears to me very desperate; and was it not solemnly put in a Case of Life, I should not conceive it required an Answer: but as it is, I am held to offer to the Consideration of the Court some Arguments, which, I trust, will be satisfactory, from a Conviction in my own Mind that they are well founded.

This is certainly the first Trial for High Treason which has taken Place in Canada, perhaps in America, if we except the shameful Proceedings had in the year 1701, against Colonel Nicholas Bayard, in the late Province of New-York, and even this is not a Case similar to the present, as his Indictment was drawn upon a local Statute. I cannot, therefore have Recourse to Precedents, but must argue from general Principles.

The Prisoner is charged with High Treason, of two Descriptions; compassing the King's Death, and adhering to his Enemies, both evidently taken from the English Statute 25. Edward; III. c. 2. which is certainly the Base of the Indictment; for, unless it is supported by this Statute, I do not hesitate to admit, that it cannot be supported at all. But while I make this Admission, I must observe, that I believe this to be the first Instance of any Doubts, public or private, respecting the Law of Treason in Canada. The Statute has uniformly been thought the Law of the Land. The total Silence of our own Provincial Legislature upon the Subject is a strong Proof of the public Opinion; for, it is scarcely to be supposed that, while we have enacted Laws for the Punishment of the lesser Offences which are injurious to Society, we should leave the great Crime of High Treason totally unthought of, and permit Individuals to effect the very Dissolution of Society, unpunished. I argue that the Silence of the Legislature

can only proceed from a Conviction, that the Statute in Question is undoubtedly in Force and sufficient for the Protection of the Government. Perhaps even my learned Friends, to whom I am opposed, might, under other Circumstances coincide with me: but this is not now to be asked—and whatever may be the Decision, they have done right in proposing the Question. It is their Duty to serve the Prisoner to the utmost Limits of his Case, and they promote the public Interest, by calling for a solemn Decision upon the Law of Treason which, above all others, ought to be clearly settled.

If I rightly comprehend them, they say, that the Statute of Edward III. is a local Statute, confined in its Operation to Treasons committed within the Realm of England; and therefore, admitting that the Statute is introduced into this Country, yet it has no effective Operation; for, Canada is not a Part of the Realm of England: Now, to support this Inference, it is necessary for them to prove that Treasons, committed out of the Realm of England, are not Offences under this Statute; for if they do not, and on the contrary such Treasons can be shewn to be Offences within the Pale of the Statute, it is evident that it is not a local Statute, confined in its Operation to Treasons committed within the Realm of England; but with respect to Treasons committed without the Realm, as the Current of Authorities is directly against them, they are totally silent, nor have they made any Attempt to shew, that by the Decision of any Court in England, the limited Construction for which they contend, has ever been put upon the Statute. It is difficult to discover on what they proceed in the Words of the Statute. Certainly nothing that can support their Argument is to be found upon the first Branch (compassing the Death of the King) the Statute contains no Restriction whatever: the Words are these "When a Man doth compass or imagine the Death of the King or of our Lady his Queen or of their Eldest Son and Heir, he is guilty of Treason" where are the Expressions limiting the Operation of this Clause in any respect? Words cannot be more general; they comprehend all Acts of Treason wherever committed. The decision of Crohagan's Case is an Authority directly to this Point, and goes to prove the established Maxim, that Treason is not confined to Time or Place as all other Crimes are; for, Crohagan's Declaration, that he would kill the King, was made at Lisbon. It is true, he afterwards came to England, but it was in Prosecution of his original Intention declared at Lisbon, which in Fact was the Treason for which he suffered. This first Clause of the Statute made no Alteration in the Law

Law of England, it is merely declaratory of what had been the common Law for Centuries before; (1) and My Lord Bacon, in his Argument upon the Case of the Postnati, says "It is plain that, if a Subject of England had conspired the Death of the King in forreign Parts, it was by the common Law of England Treason". (2) I shall not trouble your Honors with any further Observations on this Clause of the Statute. I cannot conceive that any great Expectations of Success have been formed upon it. The other Clause on which the second Count of the Indictment is drawn, is in these Words, "If a Man be adherent to the King's Enemies, in his Realm, giving to them Aid or Comfort in the Realm or elsewhere he is guilty of Treason." From the obvious Meaning of these Words, to give Aid or Comfort to the King's Enemies, in any Part of the World, is Treason; for, otherwise the Word "elsewhere" has no Import whatever. The Cases put by My Lord Hale clearly shew, that the Construction of this Clause is not confined to Acts of Adherence committed within the Realm but generally extends to all Acts of Adherence wherever committed. "If," says he, there be a War between the King of England and France, and then a temporary Peace is made, and within the Time of that Truce an Englishman goes into France and stays there, and returns before the Truce expired, this is not an Adherence to the Enemy within the Statute;" but he adds from the Authority of the Record from which he draws this Opinion, that if the Englishman, during his stay in France, had confederated or conspired with the Enemy or assisted them towards further Hostilities, that it would have been an Adherence. He puts a second Case "If an Englishman, says he, during a War between the King of England and France, be taken by the French, and there swears Fealty to the King of France, if it be done voluntarily, it is an Adherence." In both these Cases the Act which constitutes the Treason is committed without the Realm, yet, both are put as Instances of Treason within the Statute. Were it necessary to adduce further Authorities, the Statute 35th. of Henry VIII. Cap. 2. might be cited. This Act was made for the Trial of Treasons committed out of the King's Dominions. "And in it," says My Lord Bacon, after putting the Case of conspiring the Death of the King abroad, "you shall find no Words at all of making any new Case of Treason which was not Treason before; but only of ordaining a Form of Trial." Ergo it was Treason before.

(1) Vide Eden's Principles of Penal Law. p. 119.

(2) Bacon's Works. 4th. Vol. p. 192.

I might also refer to the Statute 17. Geo. III. c. 9. which was made for securing Persons charged with the Crime of High Treason committed in America: but I shall not, for, I conceive I have already fully established that the Statute of Edward III. is not a local Statute, confined to Treasons committed within the Realm of England: if it was even so, I do not, I must confess, see the Weight of the Objection which has been made on this Supposition: But as this Objection is not founded in Fact, it certainly requires no further Answer. It only remains for me to prove on this Point, that the Statute of Edward III. forms a Part of the Law of Canada, and consequently, that the Indictment is well supported by it. It is a general Principle that the criminal Law of the Conqueror immediately takes Place in all conquered Countries. This, of itself, would be a sufficient Proof that the Statute is Part of the Laws of Canada; for, Canada being a conquered Country, and the Statute Part of the criminal Law of the Conqueror, the Conclusion is necessary and obvious. But, we have a compleat Answer to every Thing which can be urged on this Point in the Words of the Quebec Act. 14. Geo. III. Cap. 83. The eleventh Clause of this Act is in these Words. "And whereas the Certainty and Lenity of the criminal Law of England, and the Benefits and Advantages resulting from the Use of it, have been sensibly felt by the Inhabitants from an Experience of more than nine Years, during which it has been uniformly administered: be it therefore enacted, that the same shall continue to be administered and shall be observed as Law in the Province of Quebec, as well in the Description and Quality of the Offence as in the method of Prosecution and Trial and the Punishments and Forfeitures there by inflicted" — It is hardly possible to conceive Words of greater Latitude. Whatever is an Offence by the criminal Law of England, becomes, by the Operation of this Statute, an Offence by the criminal Law of Canada; and if, by the Laws of England, it is High Treason to compass the Death of the King or to adhere to his Enemies, whether that Compassing or Adherence be within the Realm of England or without, the same Offence "as well in the Description as in the Quality" is High Treason in Canada.

I shall not presume to trouble the Court any further upon this Part of the Motion in Arrest of Judgment. It is one of those Points which require only to be fairly stated to produce Conviction. The other Objection is, that the Indictment is defective, because it does not contain an Averment that the Prisoner, at the
Time

Time of the High Treason, by him committed, was one of His Majesty's Subjects. I certainly expected that some Authorities would have been produced, to shew that the Words "A Subject of our Lord the King" are essential in Indictments for Treason. It is not usual on these Occasions to throw the Burthen of Justification upon the Crown Officers, without producing some Ground more solid than the Opinion of the Prisoner's Counsel, which must of Necessity be whatever promises the greatest Advantage to their Client—I looked for something more, and finding they are silent, I feel convinced that nothing can be produced; for, I am too well acquainted with the Industry of the Gentlemen concerned for the Prisoner, to suppose that the fullest Researches have not been made. They have indeed said, that the Indictment against Francis Henry de la Motte contained an Averment that he was a Subject. This I readily Grant, but it is no Authority to prove, that these Words were essential. Indictments in general contain much Surplusage. Neither is it a Case in Point; for, it was not proved, nor was any Attempt made upon the Trial to prove that he was an Alien. La Motte, when Judgment was given, stood before the Court as a British Subject; for, as the contrary was not proved, the Judges were bound to presume him such; and therefore there was not Room for the Question, whether the Averment was right or wrong; and it was in Fact perfectly consistent with the Case as it then stood. The present Question is plainly this,—whether, on the Face of the Indictment there is sufficient to warrant a Judgment against the Prisoner, for High Treason; for, if there is, the Averment, "That he is a Subject" is clearly superfluous. It may be as well to insert it where the Truth of the Case will permit it; but I have not a doubt upon the Subject in the present Instance: this being clearly the Case of an Alien; for which Reason it was intentionally omitted, and by this Omission we have saved an Argument, which the Gentlemen would otherwise have held, to convince your Honors of the Absurdity of averring an Alien to be a British Subject. As the Case admitted of Discussion, whether the Averment was inserted or omitted, it was thought the safer Course to leave it out, because the Indictment contained sufficient to warrant the Judgment without it. This is what I shall endeavour to establish, But before I proceed to remark on the several Allegations of the Indictment, the Court will permit me to observe and to produce some Authorities to prove that the Averment "That the party is a Subject" is an Innovation upon the old Form of Indictments for High

High Treason, and by whom this Innovation has been introduced or why it has been latterly adopted I cannot discover.

The Course of ancient Precedents ran in these Words "Ut falsus proditor contra naturalem Dominum suum". This is evident from their Inspection. I shall here cite a few which are those of the King against Ayliffe, (1) against Horsely, (2) against Hayes (3) against Lord Delamere (4) and against Hampden; (5) and to these I add the first Count of Lord Preston's Indictment (6) Rosewell's Indictment (7) and the Indictments against Cranbourne, Howick, Rookwood (8) and Charnock, (9) these were all Cases of Subjects, and yet they do not contain any positive Averment that they were Subjects; they aver only that the Offences were committed by each of the Parties "ut falsus proditor contra naturalem Dominum suum." Now, the Words "naturalem Dominum suum" in the Case of an Alien, it has been long since settled must be omitted. My Lord Chief Justice Holt, in Cranbourne's Case, says expressly, "No doubt it would be a fault to have put in, "contra naturalem Dominum suum" where only a local Allegiance is due. (10) This Opinion is founded upon a solemn Decision in Hilary 36. Eliz. when Stephano de Gama and Emanuel Lewis Tinoco, two Portuguese by Birth, came into England under the Queen's Safe conduct, and living then under her Protection, joined with De Lopez in Treason against her Majesty. They were detected and brought to Trial; and in their Case it was resolved by the Judges, that their Indictment ought to begin "That they intended Treason "contra Dominam Originam" omitting these Words naturalem Dominum suum—And ought to conclude, contra legeantia suæ debitum, (11) In the present Instance, knowing the Prisoner to be an Alien; this course has been pursued. This Indictment avers that He committed the Offence as a false Traitor against his Majesty, contrary to the Duty of his Allegiance, which is all that the Case of De Gama requires; and we have the Opinion of My Lord Chief Justice explicitly declared in Cranbourne's Case, that this is sufficient; "for, if it appears, says that great Lawyer, "that he has committed an Offence against the Laws of the Kingdom and against the Duty of his Allegiance, which is High Treason, that's enough. (12)

Co formably

(1) *Tremaines Pleas of the Crown*. p. 2.

(2) *Ibid*. p. 4.

(3) *Ibid*. p. 5.

(4) 6. *State Trials* appendix. p. 55.

(5) 6. *State Trials* appendix. p. 51.

(6) IV. *State Trials*. p. 410.

(7) III. *State Trials*. p. 997.

(8) 6. *State Trials* appendix. p. 55.

(9) IV. *State Trials*. p. 562.

(10) IV. *State Trials*. p. 700.

(11) 11. *State Trials*. p. 88.

(12) IV. *State Trials*. 700.

Conformably to these Authorities and the Opinion of Sir Michael Foster, to the same Effect, (1) in the late Cases (even of Subjects) particularly Lord George Gordon, and the very Case of Lamotte, which they cite, the words "naturalem Dominum" have been omitted. Since this Omission, for what Reason I cannot see, the Averment, that the Accused is a Subject, has been generally inserted. I say generally, because it has not been always done; for, in an Indictment preferred against a natural born Subject, William Stone, in the King's Bench, in England, for High Treason, in 1796, the second Count does not contain either the Averment that he was a Subject or the Words "Naturalem Dominum suum"; (2) and yet, on that Trial, on the part of the Defendant, no Exception was taken to the Form of the Indictment; on the contrary it was expressly admitted that the Indictment was sufficient: I have shewn that the Words "naturalem Dominum" must be omitted in the case of an Alien; and it is certainly best to leave them out in all Cases.

I proceed to shew why it is not necessary to insert an Averment that the Accused is a Subject, and I here call upon my learned Friends, to produce an Authority, an Opinion, a Dictum, which declares it necessary. I do not mean to say that, if inserted, it will certainly vitiate; I contend only that an Indictment, in other Respects well drawn, is sufficient without it. One of the strongest Reasons in support of this Opinion appears to me to be the general Rule of Law, that every Man must, *prima facie*, be presumed a Subject. This was stated by Sir Bartholemew Shower, in *Cranbourne's Case*; (3) and in the Case of David Lindsay it was so ruled by the Court. (4) The latter is very strong; the Indictment was founded on the Statute of William and Mary, by which it was made High Treason for any of the *Subjects* of their Majesties, who went to France, to return into England without the Royal Licence. A Motion was made after Verdict in Arrest of Judgement, because the Indictment did not aver that he was a Subject *when he went to France*. But the Court observed that this was not an Objection which could avail, because they were bound to take him to be a natural Subject unless the contrary appear. Where is the necessity of averring what the Court must assume till the contrary appear? Do we, in Indictments for any Offence aver that, at the Time it was committed, the Accused was of sane Mind? Assuredly we do not; and for the same Reason the

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(1) Foster: *Crown Law*, p. 186.

(2) See the printed Report of this Trial

(3) 4. *State Trials*, p. 700. vol. 1. 2. 3. (2)

(4) 5. *State Trials*, p. 507. vol. 1. 2. 3. (2)

Court must presume him to be of sane Mind, till the contrary is proved. There appears to be a strict Analogy between the instances of Alienage and Insanity, in this particular and in other Points; for, Insanity must be pleaded or given in Evidence, and this is undoubtedly the Rule with respect to Alienage; for it is a Fact within the Knowledge of the Accused, and the Proof of it lies upon him (5).

A Subject is defined, to be "a Member of the Commonwealth." It may be well doubted whether an Alien can possibly be brought within this Definition: certain it is, there is wide Scope for Argument to prove that he cannot. I contend therefore, that it is safer to omit the Assertion and to support the Indictment by other Averments. In this Case the Indictment sets forth the Offence itself strictly, according to Precedent, both ancient and modern, and avers that it was committed by the Prisoner, late of the Parish of Quebec, at the same Parish of Quebec, a Place within the King's Dominion and within the Jurisdiction of the Court, as a false Traitor against his Majesty. It further states that he wholly withdrew the Allegiance which he owed to our Sovereign, and that the Offence was committed by him traiterously against the Form of the Statute and against the Duty of his Allegiance. Surely this is enough, and particularly at this Stage of the Trial; for, we must recollect that this is a Motion after Verdict, and I cannot but think, that very Argument which the Counsel for the Prisoner have adopted proves, that the Jury have even found the Fact for which they contend, I mean that the Prisoner was a Subject of his Majesty at the Time of the Offence committed, according to the very Construction which they wish to put upon the Word "Subject". Their Argument is this, "Unless he is a Subject, he cannot owe Allegiance." If this be true, the converse must be equally true, that is "If he owes Allegiance, he must be a Subject:" now what have the Jury found? They have found that he owed Allegiance, for they have expressly found "that he withdrew the Allegiance which he, of right, ought to have borne towards our Lord the King" and they have also found that his Offence was committed contrary to the Duty of that Allegiance which he owed to his Majesty. They have therefore found him to be a Subject; and this Reasoning is certainly supported by what was said in Tucker's Case (7); for, Allegiance is there defined to be the mutual Bond between the King and his Subjects, by which the Subjects owe Duty to the King and the King

(5) 2. State Trials, p. 16.

(7) Lord Raymond, p. 21.

(6) Wood's Institutes, p. 22.

King Protection to his Subjects. " And Treason " said the Judges, " is the Breach and Violation of that Duty of Allegiance which the " Subject owes to the King". The Court will permit me to repeat, that the Breach and Violation of that Duty of Allegiance, which the Prisoner owed to his Majesty in this Case, is expressly found; and in this alone the Jury have found the Offence itself to be High Treason, and the Prisoner a Traitor.—But it is not upon this only that the Case must rest, they have found more, they have found that the Prisoner is of the Parish of Quebec, that he committed his Treason in that Parish, that he has been guilty, *traiterously* guilty, of the whole Charge, and that the Offence which he committed is High Treason within the Statute of Edward the third.

May it please your Honors,

I might here perhaps close the Argument without further Observation; but one Authority, which I have cited, has struck me so forcibly, that I request to be Indulged with your Permission to repeat it.—The Jury have found the Crime of which the Prisoner is guilty to be High Treason, and an Offence which he has committed against the Laws of the Province and against the Duty of his Allegiance. The Words of My Lord Chief Justice Holt, which I have already cited from Cranbourne's Case, are these. " If it appears that he has committed an Offence against the " Laws of the Kingdom and against the Duty of his Allegiance, " which is High Treason, *that's enough*.

MR. PYKE.

May it please your Honors,

In reply to what has fallen from my learned Friend, the Attorney General, in Answer to the Arguments, used in Support of the Motion in Arrest of Judgment, I shall not take up much of the Time of the Court, knowing that the Objections, which we have had the Honor to offer, need only to be fairly stated; and that the Court will give them that serious Consideration, which they may deserve.

And I must still contend upon the first Ground, that, from the plain and natural Construction of the Words of the Statute 25. Edward III. it cannot be considered as extending to Canada, so as to make any Attempt to subvert the Government of this Country, High Treason under that Statute.

Nor do I conceive, that the Quebec Act has had the Effect to introduce

produce the 25th. of Edward III. into this Country, but I humbly contend, that it was, and is, necessary to introduce it by a special Act of the Provincial Parliament. And notwithstanding all that has fallen from the Attorney General, on the second Ground of the Motion in Arrest of Judgment, I still am of Opinion that it was essentially necessary that the Indictment should have averred the Prisoner to have been a Subject; for there are two Descriptions of Subjects the one natural born the other temporary. The Prisoner at the Bar certainly comes under the second Class, and therefore, for the Reasons which we have had the Honor to state to the Court, in the opening of this Motion, I humbly conceive, that the Indictment not stating the Prisoner to be a Subject, must, on that Account, be considered defective.

THE HONORABLE CHIEF JUSTICE.

If I understand this Motion rightly, it is made upon two Grounds; the first that the Statute of Treasons is a local Statute and does not obtain in this Province; and secondly that the Indictment does not state the Prisoner to be a Subject of our Lord the King. With regard to the first Objection, independently of the Principle which some intelligent Writers have advanced, that in conquered Countries that are civilized, although the Laws respecting Property continue till varied by the Conqueror, yet that the Pleas of the Crown or the criminal Laws do *ipso facto* immediately attach,—It is well known that, by an Act of the British Legislature, the criminal Law of England is established in this Province. The criminal Statute Law of England, as the criminal Law of most Countries, is general. Some Statutes indeed are restricted to the Realm, others to particular Counties; and there never was a Doubt, but that all the general Statutes, up to the 14th of the King, are in Force in this Province. The Question then arises, are the Clauses of the 25th. of Edward 3d. upon which this Indictment is framed, penned in general Terms? The first Clause is this, “if a Man do compass or imagine the Death of our Lord the King.” Words cannot be more general; for, here is no Restriction or Limitation, either of Time or Place. The second is, “if a Man be adherent to the King’s Enemies in his Realm, giving them Aid and Comfort in the Realm or *elsewhere*.” This Clause is studiously comprehensive, and certainly takes in this Province. There can therefore be no Question whether general Clauses are to be deemed local. This is sufficiently apparent upon general Reasoning; but added thereto, there are a
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Number of Cases in Point, together with a Parliamentary Decision on the Question, whether the Statute of Treasons is or is not confined to England? *Cardinal Pole's Case* was a Compelling in *Italy*; *Dr. Storey's Case* in the *Low Countries*; *Crohagan's* in *Portugal*, and *Ebenezer Platt's Case* in *America*. To say, that a Man cannot compass the King's Death in *America*, is to say that the Operations of the Mind are suspended in *America*; and to say that *America* is neither in the Realm nor elsewhere is an Absurdity. Two several Statutes, one in the 33d. the other in 35th. Year of Henry 8th. mention Treasons committed out of the Realm of England, and without the King's Dominions. There is clearly therefore, no Reason to arrest Judgment on the first Ground.

With regard to the second Objection, that the Indictment does not state the Prisoner to be a Subject of our Lord the King, it may appear to come with a very bad Grace, after the Pains taken to prove him an Alien. If it be a necessary Averment to state that the Prisoner is a Subject, it must be necessary either as a Matter of Fact, or as a Matter of Fiction. As a Matter of Fact it is contradicted by the Evidence, and if it were necessary as a Matter of Fiction, you would not be at Liberty to disprove it, for the Reasons laid down by Lord Mansfield in the Case of *Fabrigas and Mostyn*. But in *Francia's Case*, who was an Alien, he was stated in the Indictment to be a Subject, and Evidence was allowed to be given that he was born at *Bordeaux* in *France*; and Mr. *Hungerford*, who was a very able Lawyer, seemed to be perfectly satisfied that he should be able to arrest the Judgment because that Averment was made; and to-day it is to be arrested because it was not made. In many of the old Entries, as appears by the Cases cited by Mr. Attorney General, this Averment is omitted. In modern Precedents it has been interted upon the Principle, that while a Person owes Allegiance, whether lasting or temporary, he may be called a Subject; but in the positive and absolute Sense of the Term it is a false Fact, and according to Mr. Justice Foster the safer way is to omit them. The Essence of an Indictment for Treason is this, that the Crime committed is against the Duty of the Party's Allegiance; for, as Lord Holt observes in *Cranbourne's Case*, "if the Crime be not against the Duty of his Allegiance, it cannot be High Treason." The Prisoner is charged in the Indictment with having acted against his Allegiance: that Allegiance which he owed as being of the City of *Quebec*, in this Province, Merchant; for that, is the Addition by which he is designated in the Indictment. The temporary and local Allegiance to the Supreme Power, due by every Sojourner, in every State, is

Principle of general Law. The Commorancy, averred in the Indictment, is sufficient to shew that he owed an Allegiance; he is charged with having acted against that Allegiance generally, without stating whether as Sojourner or Subject, the Allegiance due being averred, I am of Opinion that it is not necessary, to make this Indictment valid, that he should be charged as a Subject, and that, as there is nothing in either Objection, the Motion in Arrest of Judgment must be over-ruled.

Clerk of the Arraignment. David M'Lane hold up your Hand; You have been indicted of Felony and Treason, have been arraigned and pleaded thereto Not Guilty, and for Your Trial have put yourself on God and the Country, which Country have found you Guilty. What have you to say for Yourself why the Court should not proceed to give Judgment of Death upon you according to Law?

Prisoner. I have nothing more to say.

Clerk of the Arraignment. Cryer make Proclamation.

Oyes! Oyes! Oyes! Their Honours the King's Justices do strictly charge and command all manner of Persons to keep Silence while Sentence of Death is passing against the Prisoner at the Bar, upon pain of Imprisonment.

CHIEF JUSTICE.

DAVID M'LANE.

You have been indicted for the Crime of High Treason, to which Indictment, you pleaded not guilty, and for your Trial put yourself on God and the Country, by which Country you have been found guilty. You have been tried by a respectable and intelligent Jury, many of whom have heretofore served on the Grand Inquest. Your Trial has been attended with such Circumstances of Fairness, Openness and Lenity, as do not obtain in any Country upon Earth, except where the Laws of England prevail. More than twenty Days have elapsed since you were acquainted with the Particulars of the Charge brought against you, and of the Names of the Witnesses to prove it, that you might not be surprised by a sudden Accusation, and might have full Time to prepare your Defence. After the Facts charged were fully established by the Verdict, your Counsel have been heard on every Objection that could be brought to the Regularity of the Proceedings; whereas, had you been accused of the like Crime, in that Country whose Government you would wish to impose on this Province, instead of being allowed a Period of twenty Days, you might

might have been charged, convicted, and executed, in less than so many Minutes. Reflect, therefore, whether you have not been guilty of a most unjust Attempt against this Government.

It appears in Evidence that you are an Alien to the King's Government, notwithstanding which you have been treated with the same Indulgence as though you had been a native Subject. True it is, that a Treaty of Amity subsists between his Majesty's Subjects and the Citizens of the United States, many of whom, have born public Testimony to the kindly Offices received from the King's Subjects. It is an Intercourse we wish to cherish, as well with public Bodies as with Individuals, and as it is not probable that you personally have received an Injury from this Colony, you have been guilty of an unprovoked Attempt against this Government.

Having heard of some Disturbances, that were excited on Account of the Road Act, you falsely concluded that His Majesty's Canadian Subjects were disaffected to Government, and ready to join in a Rebellion, which you were willing to conduct. You might have known that it is easy to provoke Murmurs on a like Occasion in the best regulated States; in England similar Discontents have taken place and subsided as in this Country; for, a short Experience has convinced the People that the Measure was greatly for their Benefit. Putting Conscience out of the Question, as a prudent Man, you had no Grounds to go upon. No one, therefore, but a rash and unprincipled Character would have engaged in so desperate an Enterprize; and no one but a cruel and inhuman Character would have projected such Measures to carry it into Execution. Consider then, whether you have not been guilty of a most atrocious and sanguinary Attempt against this Government.

Perhaps you may think these Terms favour of a Spirit of Reproach; far from it; in your pitiable Condition, to betray such a Temper were very unworthy. No--they are uttered in the Spirit of Admonition and that upon this Principle; You seem to possess a good Understanding; I wish therefore, to fasten on your Mind the Persuasion of this manifest Truth, which nothing but the most perverse Obstinacy can resist, namely that, though your Designs were most hostile against this Government, yet you have experienced that fair Trial you would not have met with in any other Government under Heaven; in hopes, that when the Mist of Delusion shall have disappeared, the Conviction of one Truth may prepare your Mind for the Admission of others, and finally produce that Sense of Contrition and Remorse, which can alone expiate your dangerously wicked Crimes.

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Had your traiterous Project been carried into Execution, who is there in this numerous Audience that would not have felt the Consequence among his Friends and Relations, or in his own Person? But as it has pleased Providence to baffle your pernicious Designs I shall press this Subject no further. This Government, which you wished to overthrow, has, like all others, provided for its Security against those who seek to destroy it. In the Scrutiny of Offences it is more lenient than others, but is equally severe in the Punishment. That Punishment you have justly incurred, and it would be highly uncharitable to beguile you with the Expectation that it will not be inflicted. Let me, therefore, most seriously exhort you to employ the short Time you have to live, in submitting yourself with Humiliation and Repentance to the supreme Ruler of all Things, whose Goodness is equal to his Power, and who, though you suffer here may admit you to his everlasting Mercy hereafter. That such Mercy may be your Portion, is my most earnest Prayer.

It remains that I should discharge the painful Duty of pronouncing the Sentence of the Law, which is: "That you, David M' Lane, be taken to the Place from whence you came, and from thence you are to be drawn to the Place of Execution, where you must be hanged by the Neck, but not till you are dead; for, you must be cut down alive and your Bowels taken out and burnt before your Face; then your Head must be severed from your Body, which must be divided into four Parts, and your Head and Quarters be at the King's Disposal; and the Lord have Mercy on your Soul."

The ATTORNEY GENERAL moved, that a Day should be fixed for the Execution—and the Court appointed Friday, the 21st Day of July instant.

This important Trial commenced at seven o'clock in the Morning, was concluded at nine in the Evening, and was attended by the most numerous Audience ever assembled in Quebec.

On Friday, the 21st July, the Prisoner, (David M' Lane) pursuant to his Sentence, was taken from the common Gaol and placed upon a Hurdle, which moved in slow Solemnity towards the Place of Execution, attended by the Sheriff and Peace Officers of the District, a military Guard of fifty Men and a great Multitude of Spectators. About a quarter after ten the Hurdle drew up close to the Gallows erected upon the Glacis without the Garrison Wall—As soon as it stopped, M' Lane rose up he was dressed in white Linen Grave Cloaths, and wore a white Cap on his Head. The Reverend Mr. Mountain and the

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the Reverend Mr. Sparks attended him, and with them he continued in fervent Prayers for some Minutes. He then informed the Executioner that he was ready, and was by him directed to ascend the Ladder which he immediately did—But the Executioner observing that he was too high, he descended a Step or two, and then addressed the Spectators in the following Words, “ This Place gives me Pleasure, I am now going where I have long wished to be, “ and you, who now see me, must all follow me in a short Time, some of you “ perhaps in a few Days—let this be a Warning to you to prepare for your “ own Deaths.” Then addressing himself to the Military, who were drawn up in a hollow Square about the Gallows, he added, “ You with Arms in “ your Hands, you are not secure here, even with your Arms, I am going “ where I shall be secure without them.”

He immediately drew the Cap over his Face, exclaiming “ Oh God receive my Soul, I long to be with my Jesus” and dropped his Handkerchief as a Signal for the Executioner, who instantly turned him off—He appeared to struggle with Death, but a short Time.

The Body hung for five and twenty Minutes and was then cut down—A Platform, with a raised Block upon it, was brought near the Gallows, and a Fire was kindled for executing the Remainder of the Sentence. The Head was cut off, and the Executioner holding it up to Public View, proclaimed it “ the Head of a Traitor ”—An Incision was made below the Breast and a Part of the Bowels taken out and burnt; the four Quarters were marked with a Knife, but were not divided from the Body.

The whole of the Execution took up about two Hours, and the Conduct of the unfortunate Sufferer was in every Respect composed and becoming his Situation.





